

STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

No. EIB 11-01(R)

IN THE MATTER OF THE PROPOSED REVISIONS  
TO THE STATE IMPLEMENTATION PLAN  
FOR REGIONAL HAZE

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 1st day of June, 2011,  
this matter came on for hearing before the Environmental  
Improvement Board, taken at the State Capitol Building,  
Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico,  
at the hour of 9:40 a.m.

VOLUME 1

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

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1 MS. ORTH: Good morning.

2 My name is Felicia Orth, the Hearing Officer  
3 appointed by the Board to conduct a hearing in EIB  
4 11-01. This is proposed revisions to the State  
5 Implementation Plan, which you'll hear referred to as  
6 the SIP, for regional haze.

7 There are a number of parties in this matter,  
8 and I'll ask counsel for their appearances in a moment.

9 The hearing will be conducted in accordance  
10 with 20.1.1. These are the Board's rulemaking  
11 procedures, as modified somewhat by an order  
12 establishing procedures that was entered in March, and  
13 slightly modified further pursuant to a teleconference  
14 among counsel and the Hearing Officer last week.

15 Just a few things.

16 Testimony is taken under oath. It is subject  
17 to cross-examination. There are at least two parties  
18 who intend to present some of their technical witnesses  
19 as a panel.

20 If you have not submitted prefiled technical  
21 testimony, you may offer nontechnical public comment at  
22 this time, and we'll talk about nontechnical public  
23 comment.

24 The hearing is being recorded and transcribed  
25 by Cheryl Arreguin of Kathy Townsend Court Reporters.

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1 Please contact Cheryl directly if you'd like a copy of  
2 the transcript. Eventually it also becomes a public  
3 record when received in the office of the administrator  
4 and may be reviewed in our offices.

5 We expect this hearing to proceed through  
6 today in Santa Fe, tomorrow in Farmington. The Board  
7 may choose to make a decision at the end of the closure  
8 of the record. And we don't know if that will be  
9 tomorrow or Friday in Farmington.

10 So if you have, again, verbal public comment,  
11 I will invite it. If you have written public comment,  
12 you may simply bring it up to the desk, and we'll accept  
13 it up until closure of the record.

14 Counsel, would you make your appearances.

15 Mr. Grantham, please start.

16 MR. GRANTHAM: Good morning, Madam Hearing  
17 Officer.

18 My name is Bill Grantham. I'm assistant  
19 general counsel with the Environment Department. And  
20 I'll introduce my witnesses shortly, when we begin  
21 testimony.

22 MS. ORTH: All right. Thank you.

23 Mr. Alvidrez.

24 MR. ALVIDREZ: Yes, Madam Hearing Officer,  
25 members of the Board.

1           My name is Rick Alvidrez with the Miller  
2       Stratvert law firm on behalf of Public Service Company  
3       of New Mexico.

4           MS. ORTH:     Thank you.

5           Mr. Schlenker-Goodrich.

6           MR. SCHLENKER-GOODRICH:   Erik  
7       Schlenker-Goodrich, Western Environmental Law Center,  
8       representing National Resources Defense Council, San  
9       Juan Citizens Alliance and WildEarth Guardians.

10          MS. ORTH:    All right.

11          Anyone else here?

12          Sir.

13          MR. ROYBAL:   Good morning, Madam Hearing  
14       Officer.

15          Charles Roybal here for San Juan Coal Company.

16          MS. ORTH:    Okay.

17          Anyone else here?

18          No.   All right.

19          We do have some other parties who were  
20       intending to present public comment, and again, let me  
21       say for the record what I said to Mr. Crawford in an  
22       E-mail, in an effort to be forthcoming, not confusing.

23               What I was explaining to Mr. Crawford is that  
24       I don't have a printer or a copier here at the  
25       roundhouse.   The Board does not have available to it

1 while we're here in this building or at the college in  
2 Farmington a printer or a copier.

3 So I was encouraging Mr. Crawford, and I'll  
4 encourage any of the rest of you, yes, we will accept  
5 certainly E-mail comment. It's our protocol. However,  
6 if you send it now, during the hearing, I don't have an  
7 opportunity to print it off for the Board to look at. I  
8 simply have an opportunity to forward it to them.

9 The best way if you want to offer written  
10 comment during the -- during the hearing, the best way  
11 to assure that it's in their hands before they  
12 deliberate is to come with eight copies.

13 That's what I was trying to explain, and  
14 that's -- that's for everyone.

15 So the order of testimony, which is what we  
16 discussed last week, will be the Department here first.  
17 And pursuant to the procedural order, their actual  
18 narrative testimony came in in written form quite some  
19 time ago. What they'll be doing here is just  
20 summarizing it and then standing for questions on it.

21 We'll next hear from PNM.

22 And we will probably not hear from BHP  
23 Billiton, San Juan Coal Company until we get to  
24 Farmington. The plan is to hear from their witnesses in  
25 Farmington.

1           So, Mr. Grantham -- oh. Public comment,  
2 before we begin with Mr. Grantham.

3           I'd like to have lots of opportunities for  
4 public comment. We could make an opportunity right now,  
5 before we hear any of the technical case, for those who  
6 have come early, to make sure that they have an  
7 opportunity to offer public comment.

8           We could also hear public comment after the  
9 Department's case, when I would tend to invite it  
10 anyway, and after the next party's case and after the  
11 next party's case.

12           Does the Board have any input for the Hearing  
13 Officer on that?

14           MS. PEACOCK: I'd like to hear some of the  
15 testimony before we hear the public comment. I think it  
16 would fit better for us --

17           MS. ORTH: All right.

18           MS. PEACOCK: -- and make more sense.

19           MS. ORTH: Thank you.

20           Mr. Grantham, if you would, please.

21           MR. GRANTHAM: Thank you, Madam Hearing  
22 Officer. Good morning.

23           Good morning, Madam Chair, members of the  
24 Board.

25           Again, my name is Bill Grantham. I'm an

1 attorney with the Environment Department.

2 And as the Hearing Officer has indicated, the  
3 testimony of our witnesses has been prefiled and who are  
4 with me today, Rita Bates, the head of the planning  
5 section for the Air Quality Bureau, and Mary Uhl, who is  
6 now chief of the OSHA Bureau, but until recently was  
7 chief of the Air Quality Bureau.

8 I will have just a few questions for them to  
9 supplement their written testimony, and then we'll stand  
10 for cross-examination as a panel.

11 First, I'd just like to provide a little bit  
12 of context to the Board to help the Board understand how  
13 the Department's testimony corresponds with the  
14 regulatory scheme that's provided by the Regional Haze  
15 Rule.

16 As you know from the pleadings, this State  
17 Implementation Plan, or SIP, was developed to comply  
18 with the requirements of so-called Section 309 of the  
19 Regional Haze Rule. That's 40 CFR 51.309.

20 And Section 309 implements the recommendations  
21 of the Grand Canyon Visibility Transport Commission.  
22 It's an option that's available to certain Western  
23 states and tribes as a means of complying with the  
24 federal regional haze requirements.

25 And as Ms. Uhl describes in her written

1 testimony, which is at NMED Exhibit 8a in some detail,  
2 the provisions of Section 309 were developed by the  
3 Western states themselves with extensive stakeholder  
4 input, including industry, environmentalists, federal  
5 land managers and others, to reflect unique Western  
6 conditions.

7 This Board approved a SIP under Section 309 in  
8 December of 2003; however, EPA has never acted upon that  
9 SIP submittal.

10 So one set of SIP revisions at issue in this  
11 proceeding are identified as revisions to the  
12 Section 309 SIP. And that's to bring those -- that 2003  
13 SIP submittal up to date to current conditions so that  
14 EPA can approve it now in -- where we are in 2011.

15 And those revisions are discussed in  
16 Ms. Bates' testimony at NMED Exhibit 9a.

17 That 2003 SIP addressed only one Class I area  
18 in New Mexico, which is the San Pedro Parks, because  
19 that was the only Class I area that was included in the  
20 Grand Canyon Visibility Transport Commission's analyses.

21 However, Section 309 has a provision known as  
22 Section 309(g) that provides that states may extend the  
23 coverage of the 309 SIP to additional Class I areas by  
24 making certain demonstrations.

25 So in the material before you is the so-called



1 Section 309(g) SIP, which would utilize that mechanism  
2 to extend the 309 SIP to the other eight Class I areas  
3 in New Mexico.

4 And as you probably realize, one mandatory  
5 element of all regional haze SIPs is the determination  
6 of the Best Available Retrofit Technology for certain  
7 facilities which were built between 1962 and 1977. The  
8 2003 Section 309 SIP, as with the revisions before you,  
9 will satisfy the Best Available Retrofit Technology or  
10 BART requirements with respect to sulfur dioxide.

11 With regard to particulate matter and nitrogen  
12 oxide, Section 309(g) requires that -- a determination  
13 by New Mexico for the only source in New Mexico that's  
14 subject to BART requirements, which is the San Juan  
15 Generating Station.

16 And that determination is discussed in  
17 Ms. Uhl's testimony at NMED Exhibit 8c.

18 And finally, there have been several revisions  
19 to the Section 309(g) SIP since the February 28th  
20 proposal, specifically in pleadings filed on May -- on  
21 April 1st, May 2nd and May 20th. Some of those  
22 revisions are to correct errors that the Department  
23 discovered on its own, and some are in response to  
24 comments from the USEPA and from federal land managers.

25 And all of the changes are in those three

1 pleadings, but for your convenience, we provided you  
2 with a consolidated version of that, which is marked as  
3 NMED Exhibit 20, and it should be in your package before  
4 you, so you don't have to flip between the different --  
5 the different pleadings to review the 309 SIP.

6 And with that, I would like to move to  
7 examination of the witnesses.

8 MS. ORTH: All right.

9 Swear them, please.

10 RITA BATES and MARY UHL  
11 having been first duly sworn or affirmed, were  
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. GRANTHAM:

15 MR. GRANTHAM: Ms. Bates, please state your  
16 name for the record.

17 MS. BATES: Rita Bates.

18 MR. GRANTHAM: And where are you employed?

19 MS. BATES: I'm employed at the Air Quality  
20 Bureau of the Environment Department.

21 MR. GRANTHAM: And what is your position  
22 there?

23 MS. BATES: I'm the Planning and Policy  
24 Section chief.

25 MR. GRANTHAM: And how long have you been in

1     that position?

2                 MS. BATES:   For six years now.

3                 MR. GRANTHAM:   And what is your educational  
4     background?

5                 MS. BATES:   I have a bachelor of science  
6     degree in biology from Humboldt State University.

7                 MR. GRANTHAM:   And what role did you have in  
8     the development of the regional haze SIP?

9                 MS. BATES:   I was the lead person for  
10    developing most parts of the SIP, but it was a group  
11    project.  As you can see, it's a large document.

12                MR. GRANTHAM:   And did you provide the written  
13    testimony that was prefiled and for this notice of  
14    intent?

15                MS. BATES:   Yes.  And those are Exhibits 9a  
16    and 9b.

17                MR. GRANTHAM:   And, Ms. Uhl, if you'll state  
18    your name for the record.

19                MS. UHL:   My name is Mary Uhl.

20                MR. GRANTHAM:   And where are you employed?

21                MS. UHL:   I'm employed with the New Mexico  
22    Environment Department.

23                MR. GRANTHAM:   And what is your position with  
24    the Department?

25                MS. UHL:   I am the Occupational Health and

1 Safety Bureau chief.

2 MR. GRANTHAM: How long have you been in that  
3 position?

4 MS. UHL: This is my 29th day in that  
5 position.

6 MR. GRANTHAM: What was your previous  
7 position, and how long were you in that position?

8 MS. UHL: I was the Air Quality Bureau chief  
9 for the New Mexico Environment Department. I was in  
10 that position for six years.

11 MR. GRANTHAM: And what role did you have in  
12 the development of the regional haze SIP?

13 MS. UHL: Well, I -- I actually oversaw the  
14 development of the regional haze SIP, including the 2003  
15 SIP that was approved by this Board, but prior to that,  
16 starting in the mid '90s, worked on modeling issues for  
17 the Grand Canyon Visibility Transport Commission.

18 I was the Western Regional Air Partnership  
19 Modeling Forum co-chair for a number of years, and that  
20 modeling developed the basis for the SIPs that the  
21 states have brought forward for regional haze for the  
22 federal Regional Haze Rule.

23 MR. GRANTHAM: And did you provide written  
24 testimony that was prefiled with the notice of intent?

25 MS. UHL: I did, and that is Exhibits 8a, 8b

1 and 8c.

2 MR. GRANTHAM: Thank you.

3 Ms. Bates, can you briefly explain the  
4 distinction between the -- what has been identified as  
5 the 309 SIP revisions and the 309(g) SIP?

6 MS. BATES: Sure.

7 Since December, 2003, New Mexico's regional  
8 haze plan and regulations approved by the EIB have been  
9 enforced by the state, despite EPA's failure to act on  
10 the SIP. Had EPA proposed disapproval of the SIP or  
11 disapproved the SIP, New Mexico would have been required  
12 to propose changes to regulations or face implementation  
13 of a federal plan.

14 After the 2003 SIP was adopted and submitted  
15 to EPA, the Washington, DC circuit case in 2005  
16 invalidated that part of the rule governing the backstop  
17 trading program. That's the SO<sub>2</sub> backstop trading  
18 program.

19 EPA finalized rules to address the court  
20 decision in October of 2006. Arizona and Oregon then  
21 dropped out of the 309 program, and they decided to  
22 implement a SIP under Section 308.

23 40 CFR 51.309, or Section 309, applies to  
24 Class I areas on the Colorado Plateau. New Mexico has  
25 one Class I area on the Colorado Plateau, and that's San

1 Pedro Parks Wilderness area.

2 The EPA indicated to states in the West that  
3 the 309 SIPs that were submitted in 2003 were not  
4 approvable due to several issues with the voluntary  
5 sulfur dioxide emission milestones.

6 Western states and the City of Albuquerque  
7 worked diligently with EPA to negotiate approvable  
8 milestones for the program and arrived at an agreement  
9 in August of 2010. At that time, Western states began  
10 the process of revising regulations and SIPs through  
11 individual state processes, as well as the City of  
12 Albuquerque as process.

13 The proposed revisions to the 309 SIP -- now,  
14 that's the original SIP that was first approved in  
15 2003 -- are that we revise the SO<sub>2</sub> milestones to levels  
16 EPA will accept, we demonstrate that the revised  
17 milestones satisfy the Best Available Retrofit  
18 Technology requirements for sulfur dioxide, we revise  
19 the projections of visibility impairment.

20 And the revisions explained in more detail --  
21 are explained in more detail in my testimony in  
22 Exhibit 9a. It also includes revisions that are shown  
23 in Exhibit 10, submitted with the May 2nd notice of  
24 intent.

25 There are also additional revisions to 28.2.81

1 NMAC in response to EPA comments on May 13th. Those are  
2 included in Exhibit 14 and were submitted in the  
3 May 20th supplemental notice of intent.

4 The 309(g) SIP includes all remaining Class I  
5 areas. There are eight additional Class I areas in New  
6 Mexico. This section of the rule allows states to take  
7 credit for improvements due to the Section 309  
8 strategies.

9 In doing so, states must meet core  
10 requirements, and that is to set reasonable progress  
11 goals, have a calculation of baseline and natural  
12 conditions, include long-term strategies to meet those  
13 goals, and have a monitoring strategy and meet some  
14 other requirements.

15 The Regional Haze Rule contains numerous  
16 specific provisions governing contents of these four  
17 core requirements. My testimony at Exhibit 9b provides  
18 cross-references to the section of the 309(g) SIP where  
19 each element of the rule is satisfied.

20 There is also a Best Available Retrofit  
21 Technology requirement for nitrogen oxides and  
22 particulate matter, and Mary Uhl will discuss this in  
23 more detail.

24 In summary, all Class I areas are improving on  
25 the 20 percent best days except for Carlsbad Caverns

1 National Park. We've looked at that, and it appears as  
2 if the growth and emissions from New Mexico that were  
3 projected to occur by 2018 are causing us not to improve  
4 and actually degrade slightly on the 20 best days.

5 All of the Class I areas in New Mexico are  
6 improving on the 20 percent worst days in 2018.

7 Long-term strategies in the existing 309 SIP,  
8 as revised, are sufficient for the other Class I areas.

9 And I wanted to let you know, as well, that  
10 we'll be back before you, because there is another SIP  
11 revision due in 2013. This is a program that continues  
12 on. So we will be back to this Board many times between  
13 now and 2064 to revise the SIP. And I don't think we'll  
14 all be here then.

15 MR. GRANTHAM: Ms. Bates, did the Department  
16 receive any comments from federal agencies on any of  
17 these SIP revisions after the petition in this matter  
18 was filed on February 28?

19 MS. BATES: Yes. We received comments from  
20 the Forest Service, the EPA, the National Park Service  
21 and the Fish and Wildlife Service. We also received  
22 citizen comments from San Juan Citizens Alliance, and  
23 these were submitted to the Board on May 27th by Western  
24 Environmental Law Center, as well.

25 Comments were also posted on our web site.



1           Our responses to the EPA and Forest Service  
2       comments were submitted to the Board on May 20th in our  
3       supplemental NOI. We received the National Park Service  
4       and Fish and Wildlife Service comments on May 25th, and  
5       we have prepared responses to those comments.

6           We also added the time to meet the natural  
7       visibility goal. We already added that. That was one  
8       of their comments.

9           One of their comments was also how did we pick  
10      the sources that we looked at for New Mexico for the  
11      four-factor analysis.

12           And the way we did that, we had done a lot of  
13      work in the Four Corners region already on oil and gas  
14      and power plant emissions. We felt we had a pretty good  
15      handle on what those were, and we're continuing to work  
16      on those through the Western Regional Air Partnership,  
17      but we just were independent in what the three  
18      refineries were looking like and how they were affecting  
19      Class I areas.

20           And they also had a question about long-term  
21      strategies. We think our long-term strategy does  
22      include federal and state programs.

23           MR. GRANTHAM: And for the Board's  
24      information, the responses the Department prepared to  
25      the federal land manager's requirements -- excuse me --

1 federal land manager's comments that we just received  
2 last week are before you marked as Exhibit 21. And  
3 that, along with Exhibit 20, have also been provided to  
4 other counsel.

5 Ms. Uhl, are you familiar with the submissions  
6 that Ms. Bates described?

7 MS. UHL: Yes.

8 MR. GRANTHAM: And did they include any  
9 comments pertaining to the BART determinations for the  
10 San Juan Generating Station?

11 MS. UHL: Yes. USEPA's comments point to  
12 differences in cost effectiveness and control efficiency  
13 between New Mexico Environment Department's proposed  
14 determination and the USEPA proposed determination.

15 And the federal land managers believe that the  
16 BART determination should be selective catalytic  
17 reduction, or SCR, as proposed by USEPA, and not SNCR,  
18 as proposed by the Department.

19 MR. GRANTHAM: And, Ms. Uhl, can you explain  
20 why the Department changed its BART determination  
21 between the June 20 -- June, 2010 petition and the  
22 petition in this matter?

23 MS. UHL: In June of 2010, New Mexico  
24 Environment Department proposed selective catalytic  
25 reduction, SCR, as Best Available Retrofit Technology

1 for all four units at the San Juan Generating Station.

2 Since that time, the Department, working  
3 closely with the Public Service Company of New Mexico,  
4 has determined that the cost increases to ratepayers in  
5 New Mexico for the SCR installation would be overly  
6 burdensome. The increase is particularly relevant  
7 because 40 percent of PNM's customers in the state are  
8 eligible for federal assistance in paying their utility  
9 bills.

10 Federal regulations guiding the BART  
11 determination provide discretion to the state to take  
12 into consideration all costs of a control technology.

13 Because of overly burdensome costs to the  
14 citizens of New Mexico, New Mexico Environment  
15 Department determined that SCR was not actually  
16 economically feasible in this state. SNCR is  
17 economically and technically feasible. Therefore, it is  
18 New Mexico Environment Department's determination that  
19 SNCR is Best Available Retrofit Technology for the San  
20 Juan Generating Station.

21 MR. GRANTHAM: And, Ms. Uhl, why are there  
22 differences between NMED's and EPA's cost estimates for  
23 the BART determination?

24 MS. UHL: There are some differences between  
25 USEPA's cost estimates for SCR and NMED's accepted cost

1 estimates for SCR. The cost discrepancies are the  
2 direct result of both USEPA and PNM utilizing different  
3 costing methodologies in their analysis, which is  
4 allowed by USEPA guidelines.

5 The guidelines allow costs to be based on  
6 USEPA's what's called OAQPS Control Cost Manual, as well  
7 as on vendor-supplied data. As authorized in the  
8 guidelines, PNM estimated costs using vendor data.  
9 USEPA, on the other hand, estimated costs solely using  
10 the Control Cost Manual.

11 In practice, however, the costs are likely to  
12 be somewhat overestimated or conservative using the  
13 vendor data and underestimating using the USEPA Control  
14 Cost Manual. Therefore, the actual costs are likely  
15 somewhere between the two estimates.

16 Although PNM's costs may be conservative, the  
17 estimates do define the upper bounds of the cost ranges,  
18 and the NMED has accepted PNM's cost analysis as a  
19 reasonable estimate of the cost of SCR installation at  
20 San Juan Generating Station.

21 Because New Mexico Environment Department  
22 accepts PNM's estimate, New Mexico Environment  
23 Department rejects USEPA's cost estimate calculations.

24 MR. GRANTHAM: And for both of you, is there  
25 anything in addition you would like to add that I didn't

1 ask about?

2 MS. UHL: I respectfully request that the  
3 Board adopt these plan and rule revisions at the  
4 conclusion of this hearing.

5 The Department also advises the Board that the  
6 proposed revisions may be revised to correct any  
7 typographical errors we may find and to reflect  
8 formatting changes required by The Administrative Law  
9 Division of the New Mexico Commission of Public Records  
10 for compilation into the New Mexico Administrative Code.

11 Thank you for your attention.

12 MR. GRANTHAM: Thank you.

13 Madam Hearing Officer, that's all the  
14 questions we have on direct.

15 I would like to move for admission of Exhibits  
16 1 through 19 as provided in the notice of intent and  
17 supplemental notice of intent and Exhibits 20 and 21 as  
18 supplied here this morning.

19 MS. ORTH: All right.

20 Are there objections to the admissions of NMED  
21 Exhibits 1 through 21?

22 Counsel?

23 MR. ALVIDREZ: No objection on behalf of PNM.

24 MR. SCHLENKER-GOODRICH: No objection.

25 MS. ORTH: All right. Thank you.

1           They're admitted.

2           (Exhibits NMED 1 through 21 admitted into  
3           evidence.)

4           MS. ORTH: Pursuant to our agreement in the  
5           teleconference last Tuesday, cross-examination will be  
6           conducted in the same order as presentation.

7           So, Mr. Alvidrez, do you have questions of the  
8           Department panel?

9           MR. ALVIDREZ: We have no questions.

10          Thank you.

11          MS. ORTH: All right.

12          Mr. Roybal, do you have questions of the  
13          Department panel?

14          MR. ROYBAL: No questions.

15          MS. ORTH: Okay.

16          Mr. Schlenker-Goodrich, do you have questions?

17          MR. SCHLENKER-GOODRICH: Just a few questions,  
18          please.

19          Should I sit up here?

20          MS. ORTH: That's great.

21                               CROSS EXAMINATION

22          BY MR. SCHLENKER-GOODRICH:

23                  MR. SCHLENKER-GOODRICH: Good morning.

24                  I'm Erik Schlenker-Goodrich with the Western  
25          Environmental Law Center, representing NRDC, San Juan

1 Citizens Alliance and WildEarth Guardians.

2 I just had a couple quick questions about  
3 your -- the cost estimates.

4 And you indicated that the reason for  
5 switching from SCR technology in the 2010 proposal by  
6 the Department to SNCR was based on what you viewed as  
7 unacceptable ratepayer impacts?

8 MS. UHL: (Nods head.)

9 MR. SCHLENKER-GOODRICH: When you did that  
10 cost analysis, did you quantify any of the benefits of  
11 enhanced visibility protections that would have been  
12 afforded by SCR technology?

13 MS. UHL: No, we did not.

14 MR. SCHLENKER-GOODRICH: Did you quantify any  
15 of the enhanced public health benefits that would be  
16 provided by SCR technology versus SNCR technology?

17 MS. UHL: No, we did not.

18 MR. SCHLENKER-GOODRICH: Would it be fair to  
19 say that the focal point of the cost compliance analysis  
20 was simply ratepayer impacts?

21 MS. UHL: That's correct, the overly  
22 burdensome cost to ratepayers.

23 MR. SCHLENKER-GOODRICH: Was there any  
24 balancing done in terms of economic impacts regarding  
25 public health or enhanced visibility protections, even

1 qualitative analysis?

2 MS. UHL: No.

3 MR. SCHLENKER-GOODRICH: No further questions.

4 MS. ORTH: Thank you, Mr. Schlenker-Goodrich.

5 Mr. Rose, I do see you've joined us since I  
6 asked for appearances the first time.

7 Do you have questions of the Department panel?

8 MR. ROSE: No questions, Madam Hearing  
9 Officer.

10 MS. ORTH: All right. Thank you.

11 Does anyone else have a question of the  
12 Department panel based on their testimony?

13 Board members, do you have questions of the  
14 Department panel?

15 EXAMINATION

16 BY THE BOARD:

17 MR. CASCIANO: I have a question for  
18 Ms. Bates.

19 You mentioned that all Class I areas in the  
20 state had been improving in regard to visibility.

21 And I wondered if you could quantify that at  
22 all or if you had any sort of summary information in  
23 terms of some of the terms that are used, like deciviews  
24 or -- you know, how would you -- do you have any  
25 information beyond saying that the visibility is



1 improving?

2 MS. BATES: We do have some tables that do  
3 show how visibility has been improving. Now, if I can  
4 find those.

5 In Section 9.2.1 and in 9 -- in Table 9-1,  
6 which is in Section 9.2, there is information in here on  
7 how visibility --

8 MR. CASCIANO: Which exhibit is that?

9 MS. BATES: That would be what you just  
10 received today.

11 MR. CASCIANO: 20? Okay.

12 MS. BATES: Exhibit 20, I believe.

13 And it would be on pages 55 and 56. So it's  
14 the 309(g) SIP.

15 MR. CASCIANO: 55 and --

16 MS. BATES: And 50 -- it goes on from 55 for  
17 each Class I area through page 63, but the Table 9-1  
18 summarizes.

19 MR. CASCIANO: On page 56?

20 MS. BATES: On 55.

21 That's projections. But the actual is shown  
22 in the table -- or the figures, Figure 9-1, 9-2, 3, 4,  
23 5 -- that should be 6 -- oh, 6, 7 and 8.

24 If you -- the little --

25 MR. CASCIANO: So are you comparing the 2004

1 baseline to the 2018 projection or --

2 MS. BATES: That's --

3 MR. CASCIANO: I'm just looking for the basis  
4 of your statement that the visibility had been improving  
5 in the Class I areas in New Mexico.

6 MS. BATES: We project improvement, and we --  
7 actually, we do show in these figures for the last --  
8 from 2005 through 2009, the last four years, if you look  
9 at the pollutants, they do show in most cases  
10 improvement. It doesn't show here the actual deciview  
11 values for these, but --

12 MR. CASCIANO: So those are the line graph --

13 MS. BATES: Yes.

14 MR. CASCIANO: -- tables?

15 MS. BATES: Yes.

16 MR. CASCIANO: Okay.

17 MS. BATES: And those points are actually  
18 actual data, monitoring data from 2005 through 2009.

19 MR. CASCIANO: Where you see more variation in  
20 the lines?

21 MS. UHL: If I may, if you look on the next  
22 page, page 57, and you look at, for instance,  
23 particulate organic mass, the green line, you do see  
24 significant reductions at Bosque del Apache over the  
25 last five years.

1 MS. BATES: Yes.

2 MS. UHL: So some pollutants we are seeing  
3 improvements, some pollutants we are seeing degradation.  
4 It really depends on the pollutant. So --

5 But the program is rather young. This is a  
6 program that extends through the year 2064. So the  
7 state has a lot of time to show improvements in  
8 visibility as the program proceeds.

9 MR. CASCIANO: Thank you.

10 MS. BATES: And Table 9-1 shows that we  
11 project improvement on the worst days in all areas for  
12 2018.

13 MR. CASCIANO: Based on these --

14 MS. UHL: That's based on -- no. That is  
15 based on modeling of all controls that will take place  
16 throughout the West, controls we expect to be enacted,  
17 federal, state controls.

18 MR. CASCIANO: So it doesn't differentiate  
19 between the future controls for the San Juan Generating  
20 Station or --

21 MS. UHL: It doesn't go into that kind of  
22 detail. No.

23 MS. BATES: This includes controls in other  
24 states, as well. So it's the projection of all the  
25 Western states and -- and also Eastern states, because

1 they also impact visibility in Class I areas. This is a  
2 regional program. So these projections include not just  
3 the region, but also outside of the region, including  
4 emissions from Mexico, Pacific offshore, things like  
5 that.

6 MR. CASCIANO: Okay.

7 Thank you. That clarifies.

8 MS. ORTH: Other Board questions?

9 MR. VOLKERDING: I've got a couple, and they  
10 bounce around, so I apologize.

11 The first one kind of follows up on  
12 Mr. Casciano's.

13 I had noticed in Exhibit 2 that the EPA -- is  
14 that EPA is proposing to disapprove the New Mexico SIP,  
15 da-da-da-da, because of the good neighbor requirements.

16 So I was just curious -- that's out of the  
17 Federal Register. How -- what about the other states?  
18 I mean, have all the surrounding states had their SIPs  
19 approved by EPA, that you know of?

20 MS. UHL: No.

21 MR. VOLKERDING: No?

22 MS. UHL: In fact, that is not the case.

23 MR. VOLKERDING: Okay.

24 MS. UHL: Only some states are -- were named  
25 in this litigation.

1 MR. VOLKERDING: Okay. I see. All right.

2 And do you happen to know the status of the  
3 Federal Implementation Plan for the Navajo tribe?

4 MS. UHL: On -- on regional haze?

5 MR. GRANTHAM: Four Corners.

6 MR. VOLKERDING: Yeah, for Four Corners.

7 MS. UHL: For Four Corners, the BART?

8 MR. VOLKERDING: Yeah.

9 MS. UHL: It's still in -- it's still in  
10 proposal.

11 MR. VOLKERDING: Okay.

12 MS. UHL: There has not been a final yet.

13 MR. VOLKERDING: Okay.

14 MS. PEACOCK: With your question, there were  
15 how many states, four or five states, in the consent  
16 decree? Have any of those had SIPs approved?

17 MS. UHL: I know that Colorado has submitted  
18 their SIP. I don't know that it's been approved yet.

19 MS. BATES: I don't know either. I -- EPA has  
20 a longer timeline to approve than we have to submit, it  
21 feels like sometimes.

22 MR. VOLKERDING: And this may be a better  
23 question for PNM, but I'll start with you.

24 Looking through a lot of the technical  
25 documents, there was a debate between EPA and NMED and

1 PNM on the fuel at the San Juan Generating Station,  
2 whether it was considered bituminous or subbituminous.

3 And I just -- was that ever resolved? I mean,  
4 was there ever an agreement, or --

5 MS. UHL: The Department determined that it  
6 was a subbituminous --

7 MR. VOLKERDING: Okay.

8 MS. UHL: -- classification, and that -- that  
9 is how the BART determination has proceeded.

10 MR. VOLKERDING: Okay. That's what it looked  
11 like, but I guess I never -- there was a lot to read, so  
12 I apologize if that was --

13 MS. UHL: Right.

14 MR. VOLKERDING: Okay.

15 And then in terms of accepting PNM's cost, is  
16 there -- you know, it is to their advantage to propose  
17 as high a cost as possible.

18 So is there any backstop or any follow-up once  
19 all of the work is done to show that they were close, or  
20 how does that work?

21 MS. UHL: There is no provision of the federal  
22 rule that requires --

23 MR. VOLKERDING: Okay.

24 MS. UHL: -- a follow-up at the end to  
25 determine the costs. All the -- all the cost estimates

1 are done prior to installation.

2 MR. VOLKERDING: Okay.

3 MS. UHL: It could be useful information for  
4 the future, of course, but once the controls are in  
5 place, there wouldn't be some -- if you're -- if your  
6 question is would at some point PNM have to take the  
7 controls off and put on different controls --

8 MR. VOLKERDING: Yeah. I don't know what  
9 exactly -- I don't know what the ramification would be.  
10 I was just kind of curious.

11 MS. UHL: Yeah.

12 MR. VOLKERDING: Okay.

13 And then there was a section -- Section 8.4 of  
14 the SIP, and this is just a confusing statement. It  
15 says that area emissions growth was based on EPA model  
16 that was subsequently withdrawn by EPA.

17 MS. BATES: Yes.

18 MR. VOLKERDING: Why was it withdrawn, and  
19 then -- but we're still relying on that -- the model.  
20 So I just kind of wanted to hear a little bit about  
21 that.

22 MS. BATES: Yes. Unfortunately, the timing  
23 was such that by the time this was done -- and remember  
24 this wasn't just done for New Mexico. This was done for  
25 all Western states by the Western Regional Air

1 Partnership through a contract with the contractor at  
2 probably a very high cost.

3 By the time it was done, then EPA withdrew the  
4 model. So it was kind of too late. And the EPA  
5 determined that it really overpredicted. So we wanted  
6 to make it clear that the area source growth is likely  
7 overpredicted. And you will notice in some of the bar  
8 charts, it really shows those area sources growing over  
9 time.

10 Also, as you're all aware, you know, in the  
11 last few years, we haven't had the kind of growth that  
12 we might have expected six years ago. So models are  
13 only good for, you know, the time that you're using  
14 them, the data that you have. They change over time.  
15 And that is one that did change.

16 MS. UHL: However, since we are projecting  
17 improvement on the worst days with this conservative  
18 estimate -- overestimate of area source growth --

19 MR. VOLKERDING: Okay.

20 MS. UHL: -- it only adds conservatism to our  
21 analysis. So it isn't as if we are going to have to  
22 redo this because of the area source modeling or  
23 anything like that.

24 MR. VOLKERDING: Okay. That's all I had.

25 MR. BRYCE: I have one question.



1           In your source analysis and your modeling, did  
2 NMED use any baselines that were in excess of the  
3 minimum EPA requirements, or what the SIP plan would be  
4 requiring?

5           MS. UHL: I believe you're asking did the  
6 Department make assumptions about rules that might not  
7 be required by federal regulations? Is that where  
8 you're -- in our baseline?

9           MR. BRYCE: In your baselines, yeah.

10          MS. UHL: Right.

11          MR. BRYCE: What were your baselines, and did  
12 they result in any working SIP that is -- goes -- brings  
13 New Mexico beyond what the federal standards would be?

14          MS. UHL: The simple answer is no. The  
15 baselines simply took into account federal and state  
16 rules that were already in place.

17          MR. BRYCE: Okay. Thank you.

18          MS. PEACOCK: I have a question back to the  
19 consent decree.

20                Did the judge approve that extension to  
21 August?

22          MR. GRANTHAM: He did, yes.

23          MS. UHL: (Nods head.)

24          MS. ORTH: Other Board questions?

25          MR. FULFER: Did the EPA cost analysis -- did

1 it include costs associated with building the building  
2 on an existing site versus like this going out and  
3 building new? Did they base their cost on going and  
4 retrofitting an existing site?

5 MS. UHL: We -- that's the USEPA cost  
6 estimate, and we did not conduct a rigorous engineering  
7 analysis of EPA's cost estimate. So we can't comment on  
8 that.

9 MR. CASCIANO: Did your cost analysis contain  
10 the operational cost? I know you had a capital cost,  
11 but are there operational costs that are also --

12 MS. UHL: Yes. Those are included in the --

13 MS. ORTH: Other Board questions?

14 Or are you -- you're looking for the answer.

15 MS. UHL: Do you want me to tell you where  
16 that is in the --

17 MR. CASCIANO: Sure.

18 MS. UHL: -- in the submittal?

19 Let me find it.

20 MR. BRYCE: We've got one copy of -- I'm not  
21 sure if that's in Exhibit 7d.

22 MS. UHL: In Appendix D, Table 11 -- Tables 10  
23 and 11, includes the -- it's the impact analysis and  
24 cost effectiveness of additional NO<sub>x</sub> control technologies  
25 and additional particulate matter control technologies

1 in that table in the total annualized costs.

2 MR. CASCIANO: So it included both?

3 MS. UHL: Yes.

4 MR. CASCIANO: And does EPA have any guidance  
5 for how you evaluate cost?

6 MS. UHL: Yes. USEPA has the Control Cost  
7 Manual. But that manual also allows you to use vendor  
8 data.

9 MR. CASCIANO: Yeah. I understood that it  
10 allows you to consider cost, but I didn't understand the  
11 criteria whether there were specific goals where -- you  
12 know, above a certain dollar amount per ton of pollutant  
13 was acceptable, and if it was less, then a certain  
14 dollar amount per ton of control was not acceptable.

15 MS. UHL: Oh, I see, Board Member Casciano. I  
16 understand your question, I believe, to be what is the  
17 cutoff of what's a reasonable cost per ton of pollutant  
18 removed, and --

19 MR. CASCIANO: Correct.

20 MS. UHL: -- and there is no bright line on  
21 that.

22 MR. CASCIANO: This is what my  
23 understanding --

24 MS. UHL: It's at the discretion of the state  
25 or at the discretion of whoever is making the

1 determination.

2 You can use historical data --

3 MR. CASCIANO: Right.

4 MS. UHL: -- to look at what's been accepted,  
5 but there is no bright line.

6 MR. CASCIANO: Thank you.

7 MS. ORTH: Other Board questions?

8 MR. FULFER: Do you feel that the -- I know  
9 you looked at several technologies on this, but how do  
10 you feel the technology is, how is it catching up with  
11 coal, and how -- I guess the question is is technology  
12 catching up and becoming feasible for implementation in  
13 clean coal?

14 MS. UHL: Board Member Fulfer, there's  
15 certainly a lot of research being done into improving  
16 control technologies for coal-fired power plants, and  
17 that is a continuous work.

18 Certainly what we have before us, the range of  
19 options that were reviewed in this BART determination is  
20 very robust. There is -- there is a lot to choose from  
21 here. And I do believe that technology will continue to  
22 evolve over time. But at this time, the technologies  
23 are very good for improving -- or for reducing emissions  
24 from coal-fired power plants.

25 MS. ORTH: Other Board questions?

1 Mr. Grantham, do you have any follow-up?

2 MR. GRANTHAM: Just a couple, Madam Hearing  
3 Officer.

4 REDIRECT EXAMINATION

5 MR. GRANTHAM: And either of you can answer  
6 this, if you can.

7 Does the guidelines for the BART  
8 determination, Appendix Y of Part 51 -- does it require  
9 consideration or quantification of benefits as part of  
10 the BART determination?

11 MS. UHL: Can you clarify what kind of --

12 MR. GRANTHAM: Benefits such as the economic  
13 value of visibility improving or health values of --  
14 that are a side effect of the visibility improvement.

15 MS. UHL: No, it does not.

16 MR. GRANTHAM: It does not require that?

17 MS. UHL: It does not require that.

18 MR. GRANTHAM: Does it allow for that or  
19 specifically mention that?

20 MS. UHL: I don't believe it mentions that.  
21 No.

22 MR. GRANTHAM: Thank you.

23 And regarding the -- the question about cost  
24 cutoffs or what is a reasonable cost, if you're able,  
25 can you -- can you give a range of the costs that

1 underlie the technologies that EPA was looking at as  
2 presumptive standards for BART, presumptive emission  
3 limits for BART?

4 MS. UHL: I think I can give a general range  
5 on that.

6 As far as getting to presumptive limits,  
7 plants in the US that have looked at meeting presumptive  
8 limits, the costs might be anywhere from \$800 per ton  
9 removed to about \$2,000, \$3,000 ton -- per ton removed.  
10 But that's certainly just a ballpark. It's not a hard  
11 and fast number. But generally that's the range that  
12 I've seen from the BART determinations I've looked at.

13 MR. GRANTHAM: Okay. Thank you.

14 No more questions.

15 MS. ORTH: All right. Thank you very much.

16 Is there any reason not to excuse the  
17 Department panel?

18 Hearing none, thank you very much.

19 Let's turn now -- if the Board would like a  
20 break, this is a good time, or we can turn to accepting  
21 public comment.

22 MS. PEACOCK: Let's do -- does anybody need a  
23 break?

24 Public is fine.

25 MS. ORTH: We're all right?

1 All right. We're going to turn now from the  
2 technical case to accept some public comment.

3 I have the first four sign-in sheets. I will  
4 call you in the order in which you signed in if you  
5 indicated that you'd like to give public comment.

6 Please sign in if you haven't done so. No  
7 salesmen will call. We use the sign-in sheets as  
8 evidence of public participation and for the correct  
9 spelling of your name for the -- for the transcript.

10 You can change your mind. If you indicated  
11 that you didn't want to make public comment and now you  
12 do, that's fine. If you said that you did and now you  
13 didn't, that's fine, as well.

14 And as I said, you are certainly welcome to  
15 submit your public comment in writing.

16 Comment is taken under oath, and the Board may  
17 have questions of you.

18 Because we have not hordes of people, I will  
19 not pull out my stopwatch with the three-minute timer.  
20 I will ask you to keep your comments under five minutes.  
21 There are a couple dozen folks who want to speak.

22 So Carla Sonntag.

23 MS. SONNTAG: I have written comments, too.

24 Should I give them to you?

25 MS. ORTH: Yes, please.

1 Thank you.

2 MS. SONNTAG: Thank you.

3 CARLA SONNTAG

4 having been first duly sworn or affirmed, was  
5 examined and testified as follows:

6 DIRECT TESTIMONY

7 THE REPORTER: Would you state and spell your  
8 full name, please.

9 MS. SONNTAG: Yes. Carla Sonntag, C-A-R-L-A  
10 S-O-N-N-T-A-G.

11 THE REPORTER: Thank you.

12 MS. SONNTAG: Good morning.

13 My name is Carla Sonntag. I'm the executive  
14 director of the New Mexico Utility Shareholders  
15 Alliance.

16 And I'm here to talk to you today about Case  
17 Number EIB 11-01, the regional haze proposal at San  
18 Juan.

19 The New Mexico Utility Shareholders Alliance  
20 represents about 7,000 people, shareholders of gas and  
21 electric utility companies operating in the state. The  
22 vast majority of those are PNM shareholders. But  
23 something that's important to keep in mind, they're also  
24 ratepayers. And I am here today to urge you to please  
25 adopt the State Implementation Plan as proposed by the



1 New Mexico Environmental Department.

2 NMUSA supports clean air and good visibility,  
3 but much has already been accomplished at this plant in  
4 regards to both of those initiatives. PNM spent  
5 \$320 million in 2009 on environmental upgrades to reduce  
6 pollutants and improve visibility in the region.

7 In combination with what's being proposed with  
8 the SCNR, we believe that you're going to have -- I'm  
9 sorry -- the SNCR technology at the plant, it will  
10 address the cost effectiveness requirements of the  
11 federal regulations with respect to haze reduction and  
12 technology costs.

13 It's going to further improve visibility. It  
14 will lower NO<sub>x</sub> emissions by 4,900 tons per year. This  
15 would be a total of 54 percent reduction of NO<sub>x</sub> when  
16 combined with the 2009 upgrade.

17 The state plan will also reduce the cost of  
18 required upgrades significantly from the federal  
19 proposal for the selective catalytic reduction  
20 technology.

21 An internal survey of our members showed that  
22 the vast majority are retirees on a fixed income. Over  
23 72 percent are 65 years or older, and 47 percent of them  
24 have an annual income of less than \$50,000.

25 Our members support the state's plan because

1 it provides balance between minimizing costs and  
2 protecting the environment.

3 I want to thank you for your consideration,  
4 and I hope you'll give serious consideration to all the  
5 elements of the two proposals, and keep in mind the  
6 impact on ratepayers in the third poorest state in the  
7 nation.

8 Thank you.

9 MS. ORTH: Thank you, Ms. Sonntag.

10 Board, I'm not going to invite questions every  
11 time. If you would, if you have a question, please  
12 speak up.

13 James and Donna Crawford.

14 JAMES CRAWFORD

15 having been first duly sworn or affirmed, was  
16 examined and testified as follows:

17 DIRECT TESTIMONY

18 THE REPORTER: Would you state and spell your  
19 full name.

20 MR. CRAWFORD: James Crawford, J-A-M-E-S  
21 C-R-A-W-F-O-R-D.

22 THE REPORTER: Thank you.

23 MR. CRAWFORD: Madam Chairman and EIB Board  
24 members, I'm willing to take the blame from Felicia, but  
25 I wasn't the one -- I wasn't the one you wrote to, so --

1 anyway, just to make that straight.

2 I'm James Crawford, I'm from Los Lunas, New  
3 Mexico. And I'm just an interested citizen representing  
4 myself.

5 I, in fact, read the hundreds of pages of  
6 material in this case that contained enough charts,  
7 tables, graphs and impressive mathematical formulas to  
8 make one's head spin.

9 It really is a dazzling display of  
10 pseudoscience, but when one cuts through all of the  
11 mush, the question is is there any logical common sense  
12 result? And I'd have to say I think not.

13 This hearing is about visibility. This is a  
14 visibility rule, haze rule, in Class I federal  
15 wilderness and national park areas.

16 So how is visibility measured? Visibility is  
17 measured with a deciview, one deciview representing the  
18 change in visibility that's perceptible to the human  
19 eye. More deciviews mean more haze. There's probably a  
20 hundred of them over Santa Fe this morning. Zero  
21 deciviews mean no haze.

22 So if the deciviews change is less than 1, who  
23 cares? No one can tell the difference.

24 Now, the only action item being considered in  
25 this plan is which technology is going to be mandated

1 for the San Juan Generating Station.

2           You know, the owners of San Juan have spent  
3 millions, about \$320 million on already cleaning up the  
4 air. Now they're being asked to spend as much as a  
5 billion dollars more. This additional obscene amount of  
6 money is being spent to achieve no noticeable change in  
7 visibility. The benefit/cost ratio for this project is  
8 zero.

9           Other than paying my bill to PNM each month, I  
10 have no allegiance to the owners of San Juan. However,  
11 I do resent them spending millions of dollars that would  
12 be passed on to us ratepayers for zero benefit.

13           Analysis of the economic effects of this  
14 proposal are virtually nonexistent. Please remember  
15 that this plan is about visibility only. EPA -- EIB is  
16 being used as a pawn in an overt fight to close San Juan  
17 Generating Station.

18           You're going to hear from a number of sources  
19 throughout this hearing that openly advocate for closing  
20 San Juan. You're going to hear rants about things from  
21 disease epidemics to global warming as justifications  
22 for ever increasing and ever more expensive restrictions  
23 on San Juan just to bring it to its knees.

24           These arguments are unrelated to visibility.  
25 You must stay focused on whether the massive investments

1 yield any perceptible improvement in visibility.

2           Unfortunately, you're being presented with a  
3 no win situation. NMED has proposed a plan costing over  
4 \$77 million to achieve less than one-fourth of one  
5 perceptible unit of improvement in visibility. You're  
6 being blackmailed to approve the proposed plan. If you  
7 don't approve the NMED plan, a worse plan preferred by  
8 USEPA is the only alternative, costing as much as a  
9 billion dollars.

10           Choosing the least damaging of two  
11 unreasonable and ineffective alternatives is insane. A  
12 competent analysis should include all reasonable  
13 alternatives, including not taking any action at all.

14           Will visibility change if the proposed action  
15 is not implemented? The answer is a definite no. There  
16 will be no perceptible change in visibility. But there  
17 will be a perceptible change in everyone's electric  
18 bills.

19           Thank you very much. That's kind of my  
20 summary. I have more detail that I submitted in  
21 writing, and I can give a written -- maybe you already  
22 have mine.

23           MS. ORTH: (Shakes head.)

24           MR. CRAWFORD: No?

25           I don't have eight.

1 MS. ORTH: Thank you so much.

2 Judith Williams.

3 MS. WILLIAMS: Madam Chair --

4 THE REPORTER: Would you raise your right  
5 hand, please.

6 JUDY WILLIAMS

7 having been first duly sworn or affirmed, was  
8 examined and testified as follows:

9 DIRECT TESTIMONY

10 THE REPORTER: Would you please state and  
11 spell your full name.

12 MS. WILLIAMS: Judy Williams, J-U-D-Y  
13 W-I-L-L-I-A-M-S.

14 THE REPORTER: Thank you.

15 MS. WILLIAMS: I represent the League of Women  
16 Voters of New Mexico.

17 Thank you for this opportunity to speak to you  
18 today.

19 We already submitted a letter in writing. I  
20 have, unfortunately, only two extra copies. But if any  
21 of you are interested in having it passed around, I'd  
22 love to have you read it, and I hope you will later.

23 The League of Women Voters of the United  
24 States advocated for the Clean Air Act and has been  
25 pressing for its full implementation ever since. This

1 advocacy included strengthening air pollution controls  
2 on government and industry, notwithstanding the higher  
3 prices and taxes that might result.

4           The EIB is required by law to consider the  
5 human and environmental health impacts, the public  
6 interest, including social and economic factors, beyond  
7 the narrow interests of the power company, and make a  
8 thorough and objective analysis of the costs and  
9 effectiveness of its proposals.

10           This has not been done.

11           The League of Women Voters of New Mexico  
12 understands that the Department's recommendation in 2010  
13 included the selective catalytic reduction, or SCR,  
14 technology consistent with EPA's proposed Federal  
15 Implementation Plan, but it is not -- the Department is  
16 now reverse course and supports a technology which will  
17 result in a significant increase in nitrous -- nitrogen  
18 oxide emissions over the SCR.

19           The League is troubled by the Department's  
20 about-face in this matter, raising significant concerns  
21 about whether the Department is adequately considering  
22 the public's interest in the promulgation of the revised  
23 haze rule.

24           Without a compelling explanation of why the  
25 SNCR technology is in the public interest, the League of

1 Women Voters of New Mexico urges the EIB to reject the  
2 Department's proposed revisions to the haze rule. The  
3 League supports the SCR technology and urges the EIB and  
4 the Department to disregard the self-serving cost  
5 estimates provided by the industry.

6 New Mexicans deserve a complete explanation  
7 from the Department about why its newfound support for  
8 the SNCR is in the public's interest.

9 Thank you.

10 MS. ORTH: Thank you, Ms. Williams.

11 Lisa Law.

12 LISA LAW

13 having been first duly sworn or affirmed, was  
14 examined and testified as follows:

15 DIRECT TESTIMONY

16 THE REPORTER: Would you state and spell your  
17 full name.

18 MS. LAW: Lisa, L-I-S-A, Law, L-A-W.

19 Board members and people in the audience, I  
20 lived here 44 years, and I've watched what's happened to  
21 our air and our -- a lot what's happened in Los Alamos,  
22 and of the promises that we were made to keep our state  
23 clean.

24 I'm looking for our state to be an example for  
25 other states. At this point at Los Alamos, we are now



1 about to have more triggers built for atomic bombs,  
2 \$400 million, I think, at the facility. This is after  
3 we were promised to reduce nuclear triggers.

4 I think that we should take the money that is  
5 spent at Los Alamos and develop proper solar and wind  
6 generation for our energy and stop using coal, which is  
7 dirty. This about cleaning up the air, visibility, it's  
8 all a bunch of cover-up. I think we have to use our  
9 money, the taxpayers' money, to properly develop solar  
10 and wind energy.

11 I am -- I have a house in Embudo, which is  
12 totally off the grid. I provide enough energy to  
13 facilitate the ranch, and I have for the last 16 years.

14 So I think, as Mr. Crawford said, you're going  
15 to hear from a lot of people. I liked what he had to  
16 say, that we should use our money and stop using coal  
17 altogether, which is dirty.

18 Also, you have to get coal through  
19 strip-mining. We've watched what's happened to the  
20 Indians when they strip-mined at Big Mountain. We  
21 relocated over 10,000 Indians and wrecked their lives.  
22 They became alcoholics. The elders died. The Indians  
23 are not being thought about when it comes to coal.

24 So I think we should get rid of coal totally  
25 and develop -- because we have a lot of sun, we have a

1 lot of wind, as you noticed this month and last month  
2 and the month before, that we can provide enough energy  
3 for this state and be an example for other states of how  
4 we can have clean energy from now on in the future.

5 Thank you.

6 MS. ORTH: Thank you, Ms. Law.

7 Bruce Madden.

8 BRUCE MADDEN

9 having been first duly sworn or affirmed, was  
10 examined and testified as follows:

11 DIRECT TESTIMONY

12 THE REPORTER: Would you state and spell your  
13 full name.

14 MR. MADDEN: Bruce, B-R-U-C-E, Madden,  
15 M-A-D-D-E-N.

16 THE REPORTER: Thank you.

17 MR. MADDEN: I first moved to this state in  
18 1969, and one of the first things I did was go to the  
19 Sandia Peak. And I was awestruck at the pristine  
20 quality of the air, at the views from the Magdalenas up  
21 to the San Juans. Fell in love, been here ever since.

22 That's not there anymore. I go there often.  
23 That's long gone. So we're passed that. Maybe my  
24 grandkids will have that view again some day, but not if  
25 we continue to misunderstand costs.

1           We're talking -- I heard reference to  
2     visibility as being the issue. Well, the visibility  
3     problem is created by particles that are made up of  
4     various substances. And those particles are just  
5     clearly not good for humans to breathe. So if you want  
6     to discuss business climate, you might want to first  
7     start by discussing the human climate.

8           I did hear that no health considerations were  
9     made when estimating the costs involved in choosing the  
10    various technologies. That's patently foolish. The  
11    Four Corners Generating Station is, I believe, about the  
12    12th worst in the country for mercury production.  
13    Mercury is clearly a poison. We all know it.

14          When I hear costs, I also hear nothing about  
15    jobs and revenue streams. Now, if there is cost to make  
16    improvements, that's not throwing bagful of money into  
17    the -- into the boiler and burning it up. That's  
18    contractors, that's engineers, that's all kinds of  
19    technicians.

20          And by the way, I'm a retired computer  
21    engineer.

22          There are people building pumps and all kinds  
23    of equipment across the country that can use those jobs.  
24    Those people pay taxes. Those revenues will come into  
25    the state. So I doubt that those benefits, the benefits

1 of the jobs, have been considered either.

2 I've heard mention of technology and emerging  
3 technologies and improvements in technology. Well, I am  
4 all for developing technologies and have been involved  
5 in all kinds of technology developments, but technology  
6 is not useful unless it is implemented. And you folks  
7 are the folks that make the decisions to implement  
8 technologies that are available.

9 And those benefits flow to not only people in  
10 this state, but people across the country, and people  
11 across the country do need those jobs. And if we lead  
12 in these areas, rather than race to the bottom with some  
13 of the other states, we will reap those benefits in the  
14 long run. And when I think of my daughters, that's what  
15 I'm thinking, in the long run.

16 A few weeks ago, I drove my daughter back from  
17 graduating from college, and we crossed the Mojave  
18 Desert. There's an enormous facility that's built out  
19 there, and it's almost done, and it's built in under  
20 four years, and it will generate as much power as a very  
21 large coal plant, except that the source of that energy  
22 are photons from the sun, and it is also a  
23 cost-effective plant.

24 Why aren't we starting to think in those  
25 directions? Maybe keep what we have as long as we need

1 it, and keep it as clean as we can, but think ahead, not  
2 just to a year out, two years out.

3 I think that's pretty much what I have to say.

4 Thank you.

5 MS. ORTH: Thank you, Mr. Madden.

6 Ellen Caldwell.

7 Marlene Perrotte.

8 MARLENE PERROTTE

9 having been first duly sworn or affirmed, was  
10 examined and testified as follows:

11 DIRECT TESTIMONY

12 THE REPORTER: Would you state and spell your  
13 full name, please.

14 MS. PERROTTE: Marlene, M-A-R-L-E-N-E,  
15 Perrotte, P-as-in-Peter-E-R-R-O-T-T-E.

16 THE REPORTER: Thank you.

17 MS. PERROTTE: You're welcome.

18 Good morning.

19 These are ominous times. And our planet today  
20 is speaking loud and clear to all of us about our air,  
21 our water and our soil, the very existence of our  
22 planet.

23 And I come here as a sister of mercy, living  
24 and working in Albuquerque, New Mexico. I testify on  
25 behalf of all the children who celebrate today and for

1 all who will be born, for they are beloved children of  
2 God and deserve clean air, clean water and a strong  
3 healthy community that looks to the future, not to the  
4 past, not to agreed, not to money for stockholders.

5 I'm here because burning coal is a moral  
6 issue. The Four Corners Power Plant is one of the  
7 nation's dirtiest. Coal is a dirty and dangerous fuel  
8 source, and burning coal is in direct conflict with  
9 religious values of stewardship, sustainability, justice  
10 and respect for life.

11 The carbon emissions, the toxic mercury and  
12 haze generated by burning coal all have far-reaching  
13 health effects. At some moment, we must say no to dirty  
14 coal-fired plants and the problems they are creating for  
15 health, the environment and climate change, especially  
16 for our brothers and sisters throughout the planet who  
17 are suffering extreme droughts. And that is here in New  
18 Mexico. People suffering from the floods and the  
19 disruption of food production.

20 Coal-fired plants are a major part of the  
21 endangerment of the life support systems for all that  
22 God created for all people. It is the poor and often  
23 indigenous people who have contributed least to this  
24 problem, who will suffer the most.

25 Inaction cannot be an option. Money spent to

1 extend the life of the remaining two units of this power  
2 plant might be used better to move toward a clean energy  
3 future. We must transition to clean energy sources that  
4 support life. As we transition to clean energy, we must  
5 work to remediate and restore the land and communities  
6 that have been degraded and economically exploited from  
7 coal mining.

8 We support programs to provide job training,  
9 to displace coal workers and restoration of degraded  
10 lands. Each of us needs to speak truth even though it  
11 is not accepted within the current reality. Today our  
12 world is in need of a radical change, and a transition  
13 to clean energy is part of this change.

14 Now, I went to the hearing in Farmington, and  
15 the EPA had a slide presentation, and there was a map  
16 that showed the extension of the pollution. I could not  
17 get that map, but I do refer you to this map. It was  
18 the slide presentation that was given, the overview of  
19 EPA proposals for Four Corners Power Plant.

20 And it was just the San Juan. And I think if  
21 you could superimpose, the -- the radius goes all the  
22 way through Albuquerque, et cetera, from Farmington -- I  
23 mean from the Four Corners.

24 So please, do not compromise our future. We  
25 look to you to protect us from the public sovereignty of

1 our resources. We must stop and put -- and challenge us  
2 to the highest level, not to the most compromising, base  
3 level. Greed cannot be the element that drives this  
4 decision. Hold us to the highest level of technology  
5 that's possible.

6 Thank you.

7 MS. ORTH: Thank you, Ms. Perrotte.

8 Joan Brown.

9 JOAN BROWN

10 having been first duly sworn or affirmed, was  
11 examined and testified as follows:

12 DIRECT TESTIMONY

13 THE REPORTER: Would you please state and  
14 spell your full name.

15 MS. BROWN: Sister Joan Brown, J-O-A-N  
16 B-R-O-W-N.

17 THE REPORTER: Thank you.

18 MS. BROWN: Good morning.

19 And thank you for hearing our comments as  
20 public concerned citizens.

21 My name is Sister Joan Brown. I'm a  
22 Franciscan, and I'm the executive director of New Mexico  
23 InterFaith Power and Light, an organization of faith  
24 communities all across the state that work on creation  
25 care, specifically concerned with climate change and how



1 that affects us in New Mexico and our brothers and  
2 sisters throughout the planet. We see this as a moral,  
3 ethical and a spiritual concern.

4 The whole issue of haze we're addressing today  
5 really, I think, is a superficial indicator of other  
6 grave concerns of pollution and of emissions that are  
7 causing many other things. So I think that we need to  
8 address this on a deeper level.

9 Yesterday in Albuquerque Journal, in A Diary  
10 on the Planet, there was a little piece I thought was  
11 interesting, and it stated that the dramatic swings  
12 between very wet, very dry and catastrophically stormy  
13 weather are likely to be the norm from now on, according  
14 to scientists who point to an overall warmer global  
15 climate as the source of new meteorological reality.

16 And this is a quote. "It is a new normal, and  
17 I really do think that global weirding is the best way  
18 to describe what -- what we're seeing."

19 Now, you might think this is from somebody off  
20 the charts, but it was not. It was a climate scientist,  
21 Katherine Hayhoe, from Texas Tech University, not from  
22 someplace in the East Coast or the West Coast. She was  
23 meeting with business people who were quite concerned  
24 about this issue, and they were trying to see how they  
25 could address the implications of all of this pollution

1 and what it was causing with the climate and weather  
2 patterns.

3           So this is a localized issue, but it's also an  
4 international issue. And as a member at -- and the  
5 member and partner faith communities of New Mexico  
6 InterFaith Power and Light believe that the current  
7 technology of burning coal to produce electricity  
8 carries huge societal costs around air and water  
9 pollution and is one of the most significant drivers of  
10 climate disruption. These external costs are not  
11 captured in the price of coal power.

12           Every step of the current coal-fired process  
13 is dangerous to human health, from mining and processing  
14 to burning and storage of the waste ash. And those most  
15 often impacted by these dangerous processes are the most  
16 vulnerable members of our communities, the poor, the  
17 elderly and the children.

18           And I think it's interesting to note that  
19 Washington State, with the help of the InterFaith Power  
20 Light businesses and other organizations, just closed a  
21 coal-fired power plant through their legislative  
22 process. We at NMIPL support strong standards to reduce  
23 the emission from coal-fired power plants because it's a  
24 matter of health, haze, health, and the long-term future  
25 of the planet.

1           The proposed 2010 EPA implementation of  
2   safeguards to reduce pollution by 80 percent was  
3   supported by New Mexico Environmental Department in  
4   2010, and we at NMIPL are rather dismayed that NMED is  
5   considering weakening these safeguards at the San Juan  
6   Generating Station from that 80 percent reduction to a  
7   20 percent reduction.

8           As faith leaders devoted to the common good,  
9   we are opposed to this change and do not understand the  
10   justification for it. Some might argue that  
11   implementing the original goals would be too costly, but  
12   pollution is already exacting an enormous cost from the  
13   people of our state and our brothers and sisters  
14   everywhere, in terms of health and quality of life.

15           Our faith communities provide support to the  
16   economically poor through our food pantries, with energy  
17   assistance, emergency assistance, and we will continue  
18   to be those people out there aiding and walking with our  
19   brothers and sisters.

20           But we have a moral responsibility to protect  
21   the air that has been given to us by the creator and to  
22   safeguard the present and the future health of infants  
23   and children and the value which we cannot calculate in  
24   dollars and cents.

25           The Pontifical Academy of Sciences, appointed

1 by Pope Benedict of the Vatican, recently published a  
2 report in which they said, "We appeal to all nations to  
3 develop and implement, without delay, effective and fair  
4 policies to reduce the causes and impacts of climate  
5 change on communities and ecosystems, including mountain  
6 glaciers and their watersheds, aware that we all live in  
7 the same home."

8           The report further said, "We are committed to  
9 ensuring that all inhabitants of this planet receive  
10 their daily bread, fresh air to breathe and clean water  
11 to drink as we are aware of that, we want justice and  
12 peace, and we must protect the habitat that sustains  
13 us." End of quote, from the Pontifical Academy of  
14 Sciences of the Vatican.

15           So in conclusion, we are people of hope. We  
16 believe in life, and we believe that we need to protect  
17 life, from conception until death. And we recognize  
18 that the transition to clean energy is complex and  
19 requires financial investments, but we have great faith  
20 in the ingenuity and leadership and moral integrity of  
21 our government leaders and business executives and the  
22 citizens of New Mexico.

23           If we spent funds on renewables, the costs  
24 would decrease. In one way or another, we are going to  
25 have to spend money to get ourselves out of the

1 situation that we're in. We believe that we can come  
2 together despite the challenges to move towards a clean  
3 energy economy and a healthy future for our children and  
4 our grandchildren, and it is a moral, ethical and a  
5 justice imperative.

6 And I will submit to you all electronically a  
7 letter that's being signed by faith leaders throughout  
8 the state, which include Episcopal Bishop Vaughan,  
9 Reverend Donna McNiel who is the director of New Mexico  
10 Conference of Churches, the New Mexico InterFaith Power  
11 and Light board and directors, Reverend Holly Beaumont  
12 who is the organizing director for Interfaith Worker  
13 Justice, and numerous pastors who are Catholic,  
14 Mennonite, Presbyterian, Methodists and others  
15 throughout the state.

16 So I thank you for your attention this day.

17 MS. ORTH: Thank you, Ms. Brown.

18 Juan Reynosa.

19 JUAN REYNOSA

20 having been first duly sworn or affirmed, was  
21 examined and testified as follows:

22 DIRECT TESTIMONY

23 THE REPORTER: Would you please state and  
24 spell your full name.

25 MR. REYNOSA: Juan Reynosa, J-U-A-N

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

1 R-E-Y-N-O-S-A.

2 THE REPORTER: Thank you.

3 MR. REYNOSA: Hello, all.

4 Thank you all for giving me this chance to  
5 come up here and give a comment today. I've been  
6 working a lot on this issue, so I appreciate the time  
7 today.

8 My name is Juan Reynosa, and I'm an organizer  
9 with the Sierra Club here in New Mexico based out of  
10 Albuquerque. I've been heavily involved within the EPA  
11 regional haze process that's been going on for both San  
12 Juan Generating Station, as well as Four Corners Power  
13 Plant more recently.

14 During this time, being a part of these  
15 hearings, I saw numerous people commenting on the  
16 effects of haze in the region, many people who have  
17 lived there for decades commenting about the thick,  
18 yellow smoke that goes along the San Juan River and how  
19 that has affected people for generations. Many people  
20 have noticed impacts to this.

21 Many people talked about the impacts upon the  
22 tourism department, which, as you know, New Mexico is a  
23 very rural state, with a lot of beautiful, natural  
24 landscape, so we definitely rely heavily on this as a  
25 revenue stream within New Mexico. So that is definitely

1 one thing to consider as we look at these Class I areas  
2 that are affected by the haze from San Juan Generating  
3 Station.

4 And to reference what Marlene was talking  
5 about with the map of the regional haze areas that were  
6 affected, that map showed 16 Class I areas. And I will  
7 also note that one of my Navajo Coalition partners  
8 noticed that there are also six Navajo-designated  
9 environmental areas within that radius that are also  
10 affected that hadn't been noted.

11 So yes, it does affect people through the  
12 haze, but I also saw many testimonies from grandparents  
13 talking about their grandchildren, waking up in the  
14 middle of the night with asthma attacks, to also young  
15 teenagers talking about growing up and seeing how many  
16 of their friends in Farmington have contracted asthma.

17 So while many will say this is only about  
18 regional haze, there have definitely been scientific  
19 links between the ground level smog, which is caused by  
20 NO<sub>x</sub> emissions, and the health impacts on that. So I  
21 would definitely like to note that, that many people in  
22 the area have noted that during the hearings, and you  
23 could reference those notes to see many of those  
24 testimonies.

25 As a Sierra Club representative, we would like

1 to see the best available technology installed on the  
2 San Juan Generating Station to decrease emissions of  
3 nitrogen oxides. We feel this technology is selective  
4 catalytic reduction and not the selective noncatalytic  
5 reduction that the state and PNM are proposing.

6 We think that with this EPA proposal, that we  
7 are starting to realize the true cost of coal. San Juan  
8 Generating Station had one retrofit in 2009, but before  
9 that, they had not had any in the past. Four Corners,  
10 as well, is also lacking in that.

11 So I think when we talk about in terms of  
12 cost, we are talking about realizing the true costs of  
13 coal. They've been getting off easy, and now they're  
14 having to pay and be accountable for the pollution that  
15 they've emitted.

16 We also think the state should be taking into  
17 account other viable data into the recommendation  
18 instead of basing their proposal solely on data provided  
19 by PNM. PNM is, obviously, a biased party in this,  
20 since they are the majority owner of the plant, and thus  
21 would have to pay the majority of the costs.

22 Yet we see that the EPA has proposed numbers  
23 that are definitely significantly lower than what the  
24 state has proposed. They put that in both their BART  
25 proposal for the San Juan Generating Station, and as was



1 noted during the presentation, they also sent a letter  
2 to you all and the Environment Department again noting  
3 those numbers and the big discrepancy between costs.

4 We still hold true that the cost of -- for SCR  
5 is cost effective and necessary. And again, as someone  
6 just noted, it will also be opportunity for jobs. We --  
7 many people are looking at this as something that's  
8 taking away from the community. We should also look at  
9 this as an opportunity.

10 This is bringing jobs in not only through  
11 retrofits, but it also brings an opportunity to start  
12 transitioning over to renewables. Many people in that  
13 area are also looking towards opportunities in that.  
14 And I would guess if you could ask a PNM ratepayer if  
15 they were able to get a job out of this, would they be  
16 willing to also pay a little bit more, and many people  
17 in this area are in need of jobs, and so there is an  
18 opportunity that many people would not want to pass up.

19 So this proposal needs to take more into  
20 account, as well as I referenced the health impacts,  
21 from the tourism impacts, how much dollars we get from  
22 that.

23 So while PNM also uses the -- and the state is  
24 using the excuse that this is a big impact on  
25 ratepayers, we are also seeing that there's a current

1 rate case going on with PNM right now, and I don't  
2 necessarily see them using that excuse when they're  
3 using -- when they're asking for a rate increase from  
4 their ratepayers.

5 So in conclusion, myself and the 6,000-plus  
6 members of Sierra Club in New Mexico stand in opposition  
7 of this state SIP proposal and instead still stand  
8 behind the cost-effective and just proposal of the EPA  
9 to install SCR controls on the San Juan Generating  
10 Station.

11 Thank you for your time.

12 MS. ORTH: Thank you, Mr. Reynosa.

13 Virginia Miller.

14 Is Ms. Miller here?

15 MS. NOEL: Are you saying Sue Noel?

16 MS. ORTH: Virginia Miller.

17 MS. MILLER: Yeah, right here.

18 VIRGINIA MILLER

19 having been first duly sworn or affirmed, was  
20 examined and testified as follows:

21 DIRECT TESTIMONY

22 THE REPORTER: Would you state and spell your  
23 full name, please.

24 MS. MILLER: My name is Virginia J. Miller,  
25 and I'm a resident of Santa Fe, New Mexico.

1           Thank you for listening, members of the Board  
2           and the community.

3           Please strengthen the New Mexico Environmental  
4           Improvement Board plan to reduce nitrogen oxide and  
5           other harmful pollutants at the San Juan coal plant in  
6           Northwest New Mexico to at least match the current EPA  
7           plan, which is much stronger. It is way past time to  
8           take curbing global warming seriously and create  
9           conditions for health of both our people and  
10          environment.

11          Clean energy alternatives exist. Develop  
12          them. The San Juan coal plant emissions are a big  
13          contributor to the harsh realities of climate change and  
14          health problems, asthma, emphysema and other respiratory  
15          diseases, and even premature death.

16          People leave polluted areas, urban areas to  
17          visit New Mexico's beautiful national parks, hoping to  
18          find clean air to breathe. I moved to New Mexico to  
19          find cleaner air to breathe.

20          So I'm asking you to please recommend  
21          pollution reductions equal to the current EPA plan or  
22          stronger.

23          Thank you.

24          MS. ORTH: Thank you, Ms. Miller.

25          Those are the names of the folks who both

1 signed in and put a check or X in the Yes column. There  
2 will be -- thank you.

3 There will be other opportunities to offer  
4 public comment. I'll invite public comment at the end  
5 of every party's -- technical party's presentation.

6 Is there anyone else who must give comment  
7 this morning before we take a break?

8 No?

9 Thank you.

10 Board, are we ready for a break?

11 MS. PEACOCK: Yes.

12 MS. ORTH: Thank you.

13 Let's take 15 minutes.

14 (Proceedings in recess from 11:08 a.m. to  
15 11:27 a.m.)

16 MS. ORTH: All right, folks. Let's come back  
17 from the break, please.

18 Before the break, we completed the  
19 Department's presentation and also accepted several  
20 public commenters.

21 We turn now to the presentation by the Public  
22 Service Company of New Mexico.

23 Mr. Alvidrez.

24 MR. ALVIDREZ: Yes. Thank you, Madam Hearing  
25 Examiner, Madam Chairman, members of the Board.

1           My name is Rick Alvidrez, and I'm the attorney  
2           for Public Service Company of New Mexico, PNM, in this  
3           case.

4           And I have a very few brief opening remarks  
5           that I hope will aid the Board in its consideration of  
6           the matters before it today and for the next couple of  
7           days.

8           As you know, we're here to consider a  
9           regulation on regional haze. And I think it's important  
10          to note that that really is the focus in terms of this  
11          Board's assessment of the adequacy of the NMED proposal,  
12          that is does this meet the federal requirements under  
13          the federal Regional Haze Rule.

14          There certainly has been a lot of discussion  
15          about other matters, health-related effects and what  
16          have you, but those matters are really not before the  
17          Board. The question before the Board is does this  
18          regulation meet the requirements.

19          And, of course, PNM has submitted testimony in  
20          this case to support the measures that the NMED is  
21          proposing with respect to the San Juan Generating  
22          Station, which is a generating station at issue in this  
23          case, not the Four Corners Generating Station which has  
24          been referred to by some commenters.

25          In our case, we will be supporting the NMED

1 position and presenting testimony of Patrick Themig, who  
2 is vice-president of generation. Mr. Themig will talk  
3 about PNM a little bit, provide some overview about San  
4 Juan, its importance to New Mexico as an electric  
5 supplier, as well as its economic importance to the Four  
6 Corners area.

7 Mr. Themig will also talk about the recent  
8 environmental upgrades that PNM has undertaken at San  
9 Juan at the cost of in excess of \$300 million and the  
10 positive benefits in terms of air emissions that have  
11 resulted from those upgrades and that investment by the  
12 San Juan owners.

13 And he will also talk about why PNM supports  
14 the NMED proposal, BART proposal with respect to San  
15 Juan.

16 We'll also be presenting Gerard Ortiz, who is  
17 executive director of New Mexico retail services for  
18 Public Service Company of New Mexico. And Mr. Ortiz is  
19 going to address the rate impacts of the technology,  
20 selective catalytic reduction, or SCR, and also SNCR,  
21 selective noncatalytic reduction, which is embodied in  
22 the NMED proposal.

23 So the Board will have that testimony to  
24 consider in terms of assessing the economics and the  
25 cost effectiveness of the various technologies that have

1     been considered.

2                   And we will also be presenting two witnesses  
3     from Black & Veatch, which is the contractor that PNM  
4     hired to undertake the BART analysis back in 2007 and  
5     continued on working on that project to the present  
6     time.

7                   You will hear from Diane Fischer and Kyle  
8     Lucas, both of whom have extensive experience with  
9     respect to BART determinations and more specifically  
10    pollution control technology, including SCR. And they  
11    will be able to answer your questions about the cost  
12    effectiveness and their analysis of the various  
13    technologies that were considered, why some technologies  
14    were considered as cost effective, why some were not.

15                  And they will also be able to detail the  
16    differences between the EPA proposal for SCR for San  
17    Juan that's embodied in the FIP versus the differences  
18    and the costs that PNM has submitted.

19                  I would note that the issue before this Board,  
20    the proposal before this Board really is the NMED  
21    proposal. That is, there has been no -- no testimony,  
22    no technical testimony submitted in this case that would  
23    support a determination that SCR is appropriate for San  
24    Juan.

25                  No party has come forward with technical

1 testimony to support that. While there have certainly  
2 been comments, public comments, that urge the Board to  
3 go in that direction, from a technical and evidentiary  
4 standpoint, there simply isn't any evidence before this  
5 Board to consider or to require implementation of SCR in  
6 this case.

7 And I also, finally, do want to highlight a  
8 significant development with respect to the choices  
9 between the two technologies that occurred.

10 You heard, of course, the NMED talk about the  
11 cost impact to ratepayers as being a very significant  
12 consideration in their determination that SCR was too  
13 expensive.

14 But from a technology and BART standard  
15 standpoint, there was another significant difference  
16 that occurred between PNM's initial submittal of its  
17 BART determination and the present, and that had to do  
18 with SNCR technology and the ability of that technology  
19 to achieve what the EPA has classified as the  
20 presumptive limit for NO<sub>x</sub>.

21 And with the developments that have taken  
22 place in the past few years, it became apparent that  
23 SNCR technology could, in fact, reach the EPA's own  
24 presumptive limit for NO<sub>x</sub>. So by the adoption of SNCR  
25 technology, the EPA's presumptive limit for NO<sub>x</sub> will be



1 met. And we think that that is a critical element in  
2 terms of this Board's consideration of the factors in  
3 the BART determination process.

4 And we also note that in terms of the modeling  
5 that has taken place, you've heard about the WRAP  
6 modeling and the numbers that were used to calculate  
7 whether reasonable progress could be made, that that  
8 presumptive limit, the .23 limit, will beat the .27  
9 limit that WRAP set as the goal to stay on track to --  
10 to meet the reasonable progress goals for visibility.

11 So with that, what I would like to do now is  
12 call our first witness, Patrick Themig, to testify in  
13 this case.

14 If I may proceed.

15 MS. ORTH: All right.

16 If you would have all of your witnesses here  
17 sworn in.

18 MR. ALVIDREZ: Okay. Let me have all -- all  
19 of the witnesses who will be testifying on behalf of PNM  
20 stand up now and go ahead and be sworn in.

21 (PATRICK THEMIG, GERARD T. ORTIZ, DIANE M.  
22 FISCHER and KYLE LUCAS were duly sworn or  
23 affirmed.)

24 MS. ORTH: Please go ahead.

25 MR. ALVIDREZ: Thank you.

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PATRICK THEMIG

having been first duly sworn or affirmed, was  
examined and testified as follows:

DIRECT EXAMINATION

BY MR. ALVIDREZ:

Q. Mr. Themig, can you please state your name for  
the record?

A. My name is Patrick Themig. That's  
P-A-T-R-I-C-K T-as-in-Tom-H-E-M-I-G.

Q. And, Mr. Themig, can you tell us where you're  
employed?

A. I'm employed with PNM as vice-president in  
generation.

Q. And have you prepared and have filed on behalf  
of Public Service Company of New Mexico prefiled written  
testimony in this case, which has been marked as PNM  
Exhibit A?

A. Yes, I have.

Q. And do you have any changes to that testimony?

A. No, I do not.

Q. And sitting under oath here, do you now adopt  
that prefiled testimony as yours in this case?

A. I do.

Q. Mr. Themig, can you briefly provide the Board  
with a summary of your experience and educational

1 background relevant to the matters in this case?

2 A. Sure. I've been in the utility business going  
3 on 35 years, holding a number of capacities from  
4 engineering plant operations to construction in the  
5 facilities. I have a degree in mechanical engineering  
6 technology.

7 MR. ALVIDREZ: And with that, we would move  
8 the admission of PNM Exhibit A into evidence.

9 MS. ORTH: Objections?

10 Hearing none, it's admitted.

11 (Exhibit PNM A admitted into evidence.)

12 Q. (BY MR. ALVIDREZ) Mr. Themig, can you briefly  
13 summarize for the Board the salient elements of your  
14 testimony?

15 A. Sure. I'd be happy to.

16 San Juan generating facility is a critical  
17 resource for PNM. It provides base load capacity. And  
18 that base load capacity is different than what you might  
19 see from, say, a renewable source or intermittent  
20 source. It provides it low cost, reliable and safe,  
21 providing energy to 500,000 PNM customers, another  
22 500,000 New Mexico customers for other owners, and then  
23 roughly a million customers from other states.

24 The plant is -- has got an interesting  
25 ownership structure. PNM is the only party that owns an

1 interest in four units. We own half of Units 1 and 2,  
2 we own half of Unit 3, and we own 37 percent of Unit 4.  
3 And then there are various owners, another owner in  
4 Units 1 and 2, there's two other owners in Unit 3, and  
5 there's five other owners in Unit 4. So it's kind of an  
6 interesting makeup of the ownership structure.

7 And the reason that's kind of important is  
8 that when you look at capital investments, it's not just  
9 a PNM decision that's made by this ownership structure.  
10 It's from a process that's developed under participation  
11 agreements and other agreements that support the  
12 project.

13 PNM has the San Juan coal -- the San Juan  
14 Generating Station. We also own an interest in the Four  
15 Corners Plant. And just for clarification, Four Corners  
16 is roughly seven miles south of the -- the San Juan  
17 River and San Juan Generating Station is roughly six  
18 miles north of San Juan River.

19 We also own nuclear, which is base load  
20 resource. We own wind, and we own solar, and we own  
21 natural gas resources. And the natural gas resources  
22 are really kind of designed to regulate the system  
23 for -- for the intermittency of such things as  
24 renewable.

25 Unfortunately, though, we don't always run

1 natural gas units. There are times when the only thing  
2 we have on to regulate with is San Juan, and San Juan  
3 tends to act in that capacity to regulate on the  
4 intermittence.

5 San Juan facility employs roughly 400  
6 full-time equivalents. The San Juan Coal Company, which  
7 is the exclusive provider of coal, employs over 500  
8 full-time equivalents. And of those, San Juan, roughly  
9 22 percent are Native American, at the San Juan  
10 generating facility, roughly 44 percent from the San  
11 Juan Coal Company are Native American.

12 So this provides a very reliable and stable  
13 economic value to employees in the Four Corners area.

14 It's important to realize that the San Juan  
15 facility has an annual payroll of roughly \$56 million.  
16 We pay coal royalties of roughly 55 million per year,  
17 and these are annual -- annual payments, 6.4 million to  
18 San Juan County in property taxes. 30 million goes to  
19 material supplies that we need to run the facility, like  
20 limestone and other -- other costs that are needed. And  
21 then roughly 4 hundred million is spent on contract  
22 services that -- that help support the maintenance  
23 activities, the ongoing operational activities.

24 So you can see that the facility provides a  
25 very, very strong economic stimulus to the Four Corners

1 area and to the State of New Mexico in general.

2 In 2005, PNM embarked on environmental  
3 upgrades, and three of which contributed to reduction in  
4 haze. Total cost, as been referenced earlier, was  
5 \$320 million.

6 And the technologies that were deployed were  
7 pulse-jet fabric filters, and that is to collect  
8 particulate matter which directly impacts regional haze;  
9 sulfur reduction, there was a 71 percent reduction in  
10 sulfur, which is another contributor; and NO<sub>x</sub>, and the  
11 NO<sub>x</sub> was a combustion modification that reduced our  
12 nitrogen oxide emissions by roughly 44 percent.

13 So there's not a lot of discussion going on  
14 around the first two, which are SO<sub>2</sub> reduction and  
15 particulate matter, because this plant is best available  
16 control technology on those two. So the focus is on the  
17 NO<sub>x</sub>.

18 And while our BART analysis that was  
19 conducted -- and there will be members of -- that you  
20 will hear from later that will talk about the analysis  
21 and what went into the analysis. While that analysis  
22 concludes that those control upgrades that PNM and the  
23 owners invested in from 2005 to 2009 meet BART, pursuant  
24 to the criteria, PNM is supporting the proposal by the  
25 state.

1           And the reason is it furthers the goal of  
2 additional NO<sub>x</sub> and SO<sub>2</sub> emission reductions, and it -- but  
3 it does so with a balance on cost impact to our  
4 customers. So we're supporting that.

5           And thank you for my time.

6           MR. ALVIDREZ: Thank you, Madam Hearing  
7 Examiner.

8           We'd tender this witness for questioning.

9           MS. ORTH: All right. Thank you.

10          Mr. Grantham, do you have questions?

11          MR. GRANTHAM: No questions.

12          MS. ORTH: Mr. Roybal?

13          MR. ROYBAL: No questions.

14          MS. ORTH: Mr. Rose?

15          MR. ROSE: No questions.

16          MS. ORTH: Mr. Schlenker-Goodrich?

17          MR. SCHLENKER-GOODRICH: No questions.

18          MS. ORTH: All right.

19          Thank you very much, Mr. Themig.

20          Oh. I'm sorry. The Board. Very sorry.

21          Does the Board have questions of Mr. Themig  
22 based on his testimony?

23                                   EXAMINATION

24          BY THE BOARD:

25          MR. BRYCE: I have one quick question.

1           The multi-million -- \$77 million, or whatever  
2     the real number is, that is to be expensed under the  
3     SNCR plan, how difficult is it to accept that if you  
4     thought you may already meet the best available  
5     technology criteria with the upgrades you've already  
6     done?

7           MR. THEMIG: It's always difficult to accept  
8     additional cost to a facility. But one has to look at  
9     what the alternatives are with the federal EPA proposal  
10    that's out there, which is -- which is, you know,  
11    borderline billion dollar investment, and if we look at  
12    what the state has proposed, which again furthers  
13    this -- this goal of achieving a visibility by 2064,  
14    that's 53 years out in the future, we believe this  
15    actually takes that next step towards achieving that  
16    2064 goal.

17          MR. BRYCE: When I look long-term, you know,  
18    wise investment in the short-term seems to be the goal,  
19    and if long-term, say 50 years from now, or much more  
20    clean energy than we are today.

21          I guess my first question is how many years --  
22    what's the useful life of the current plant? How many  
23    more years? Is it 50 years, or how long do you think  
24    the plant will be continuing to run?

25          MR. THEMIG: We currently have a depreciation



1 schedule that takes us out to 2053 time frame.

2 MR. BRYCE: Likely to be an extension after  
3 that, or --

4 MR. THEMIG: There could be. It all depends,  
5 and it depends on what the total cost impact is of  
6 either future regulations or other technologies that  
7 might emerge.

8 If the country embarks on a nuclear program to  
9 develop base load -- and that's what we really need, is  
10 base load replacement for a facility like San Juan. You  
11 know, if the country embarks on it and embraces nuclear  
12 programs, that ultimately may be a more cost-effective  
13 resource for us in -- sometime out in the future.

14 But that will be determined by -- you know, we  
15 do this integrated resource planning process that looks  
16 at all the variables, all the contributors that tie to a  
17 resource that we have, and through that public process  
18 there comes out a plan that's like a three-year or  
19 five-year plan.

20 So hopefully we'll have solutions for the  
21 future that make sense.

22 MR. BRYCE: We hear lots of comments from  
23 people with renewable energy and solar and wind and  
24 intermittent sources. And nuclear -- is there  
25 anything -- I might be off topic here.

1           Is there anything that the public should know  
2 about the viability of nuclear for the future?

3           Because it seems to have been on hold for so  
4 long that it seems to have dropped off the radar screen.

5           MR. THEMIG: As I said, PNM owns -- we own  
6 400 megawatts of Palo Verde Nuclear Station's base load.  
7 Two of the units are part of the jurisdictional load  
8 serving New Mexico. The Unit 3 is a merchant --  
9 merchant load, but very reliable, very safe.

10           Now, you may argue that looking at what's  
11 taken place in Japan, but those were very, very unusual  
12 circumstances with -- that contributed to the issues  
13 that are there.

14           We are currently studying some of the new  
15 nuclear technologies. There are some designs that are  
16 on the drawing board that are for small nuclear modular  
17 reactors, that are actually built underground, that are  
18 in the 125- to 200-megawatt range, that could be  
19 disbursed across various service areas, and we're  
20 looking at that. It's some years off.

21           I think the first company that's committed to  
22 one of those technologies was TVA, and they're looking  
23 at 10 to 12 years before that first unit goes  
24 commercial.

25           So through that time frame, between now and

1 then, we'll continue to study nuclear.

2 MR. BRYCE: Thank you.

3 MS. ORTH: Other Board questions?

4 MR. FULFER: I'm understanding that this  
5 \$320 million upgrade started back in 2005 and it was  
6 completed in 2009; is that right?

7 MR. THEMIG: The consent decree was signed in  
8 2005. Construction commenced, I think, late 2006, or  
9 maybe early 2007.

10 MR. FULFER: What brought this 320 investment  
11 on? What started it?

12 MR. THEMIG: It was an agreement under the  
13 consent decree to install the new technologies, which  
14 were baghouse -- poststrip baghouse, combustion  
15 modifications for NO<sub>x</sub> and an elimination or bypass of flu  
16 gas around the scrubber so we're scrubbing 100 percent  
17 of the flu gas.

18 MR. FULFER: Do you normally see a time  
19 period, say three, five, seven years, that you get to  
20 recapture your investment?

21 MR. THEMIG: Investment recapture would be --  
22 actually, it's kind of outside my realm. It's actually  
23 our accounting group who would look at all the variables  
24 on depreciation schedules and earnings and on and on.  
25 So it just kind of depends.

1           If you install a capital pump, which is a  
2   small item, that has a life of five years, you recover  
3   your investment in five years. If you install a large  
4   investment, say, like an SCR, you'd have many more years  
5   you'd have to do the recovery over.

6           MR. FULFER: As far as going to like the  
7   ratepayers and trying to recapture your costs, what time  
8   period do you normally look at on that?

9           MR. THEMIG: We look into -- and Gerard Ortiz  
10   will provide more comment on rate impact and the  
11   timeline for that, but essentially as soon as the  
12   project is completed, we do a filing in a rate case for  
13   the initial recovery of that investment.

14          MR. FULFER: So really if you look back at the  
15   timeline that you started on this BART, the -- your  
16   investment that you've already put forward -- will it  
17   count -- will some of these count toward -- or can you  
18   use some of your investment in this new technology --  
19   will it -- will it come forward -- I guess what I'm  
20   trying to say, come forward in the -- in your new  
21   program, if you -- if it was --

22          MR. THEMIG: Yeah. If I could clarify.

23               Are you referring specifically to NO<sub>x</sub>, or are  
24   you talking --

25          MR. FULFER: The NO<sub>x</sub>.

1           MR. THEMIG:  -- about the other technologies  
2   that --

3           MR. FULFER:  The NO<sub>x</sub>.

4           MR. THEMIG:  The NO<sub>x</sub>.  The NO<sub>x</sub> actually  
5   takes -- reduces the total emission by another factor,  
6   and -- and it -- the answer to the question, it all  
7   depends.  If we're able to utilize the ammonia --  
8   ammonia injection for the SNCR, and that technology is  
9   being developed now, then we could utilize the capital  
10   that's invested for the tanks and the regulators that  
11   take the ammonia to the boiler.

12           If we're required to use some other chemicals,  
13   like urea, for the SNCR technology, then it would be  
14   less likely to utilize that equipment.

15           MR. FULFER:  So you feel like there's been a  
16   significant improvement in the SNCR technology?

17           MR. THEMIG:  There has, and that is one of the  
18   reasons SNCR is now able to meet this presumptive limit  
19   that's 0.23 pounds per million BTU, is because of the  
20   technology enhancements and the way that the suppliers  
21   are able to actually get mixing of the urea and the flue  
22   gas stream and get more reactivity for the NO<sub>x</sub> reduction.

23           MR. FULFER:  That's all I have.

24           MR. CASCIANO:  I have one question.

25           You mentioned the improvement with the low NO<sub>x</sub>

1 burners and the 44 percent on the -- on the NO<sub>x</sub> emissions  
2 since 2005, I guess, that improvement.

3 MR. THEMIG: Well, it wasn't -- the  
4 construction activities actually concluded in early --  
5 or in 2007, '8 and '9, during outages, so that the total  
6 NO<sub>x</sub> reduction was phased in over those times, as we had  
7 unit outages to do the work.

8 MR. CASCIANO: And I guess my question is have  
9 there been other environmental improvements to the  
10 facility prior to 2005, in the recent set of  
11 improvements?

12 MR. THEMIG: There have. And I don't know the  
13 whole history. I've been with PNM for three years.

14 But there was a sulfur -- sulfuric acid  
15 manufacturing plant that was added to the back of the  
16 plant. It's been a number of years. And then that was  
17 subsequently converted to -- parts of it were converted  
18 to what -- flue gas scrubbers. And there were  
19 electrostatic precipitators initially installed on the  
20 facility.

21 There may have been upgrades. But those are  
22 the two that I really recall.

23 MR. CASCIANO: Okay.

24 And can you give me a sense of the trend line  
25 for NO<sub>x</sub>?

1 I mean, maybe where we are now and where we  
2 were five years ago and ten years ago from the facility.

3 MR. THEMIG: Sure. I'd be happy to.

4 What -- and there may have been low NO<sub>x</sub> burners  
5 installed at some point. When the plant was originally  
6 designed, it probably had just traditional combustors,  
7 and they may have installed low NO<sub>x</sub> burners. But our  
8 permit limit prior to the environmental upgrade was  
9 .5 pounds per million BTU, and then we now are permitted  
10 .3 pounds per million BTU, and we operate just slightly  
11 under that. So we have some latitude for variability in  
12 operations.

13 And then with SNCR, that would drop to .23, so  
14 we'd operate actually below .23 pounds per million BTU.

15 MR. CASCIANO: Okay. Thank you.

16 MS. ORTH: Other Board questions?

17 Mr. Alvidrez, do you have follow-up?

18 MR. ALVIDREZ: I have no follow-up.

19 Thank you.

20 MS. ORTH: All right.

21 Is there any reason not to exclude Mr. Themig?  
22 No?

23 Thank you very much, Mr. Themig.

24 MR. THEMIG: Thank you.

25 MR. ALVIDREZ: We can proceed, or if this is

1 the time you want to take a break and --

2 MS. ORTH: What's the Board's pleasure?

3 MS. PEACOCK: Let's proceed.

4 MS. ORTH: All right.

5 Please go ahead.

6 MR. ALVIDREZ: Thank you.

7 With that, we'd like to call Gerard Ortiz.

8 GERARD T. ORTIZ

9 having been first duly sworn or affirmed, was  
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ALVIDREZ:

13 MR. ALVIDREZ: If we may proceed.

14 MS. ORTH: Yes, please.

15 Q. (BY MR. ALVIDREZ) Mr. Ortiz, you've been  
16 sworn, as you are aware, but can you please state your  
17 name for the record?

18 A. My name is Gerard T. Ortiz.

19 Q. And can you please tell the Board where you're  
20 employed and in what capacity?

21 A. Yes. I am the executive director of New  
22 Mexico Retail Regulatory Services for PNM Resources in  
23 Albuquerque. In my current role, I'm responsible for  
24 the group that puts together the fuel forecasts, the  
25 group that manages and makes all of our NMPRC regulatory



1 filings, cost of service and pricing, as well as the  
2 group that develops and proposes to the commission our  
3 energy efficiency programs.

4 Q. And, Mr. Ortiz, have you prepared prefiled  
5 testimony in this case that we have marked as PNM  
6 Exhibit B?

7 A. Yes, I have.

8 Q. And do you have any changes or corrections to  
9 your prefiled testimony?

10 A. I do not.

11 Q. And do you now adopt that testimony under oath  
12 in this proceeding?

13 A. Yes, sir.

14 MR. ALVIDREZ: With that, Madam Hearing  
15 Officer, we would move the admission of PNM Exhibit B  
16 into evidence.

17 MS. ORTH: Are there objections?

18 Hearing none, it's admitted.

19 Thank you.

20 (Exhibit PNM B admitted into evidence.)

21 Q. (BY MR. ALVIDREZ) Mr. Ortiz, can you briefly  
22 summarize the salient topics of your prefiled testimony  
23 for the Board?

24 A. Yes, sir. I would like to begin by providing  
25 a beef -- brief summary of my background and experience.

1 I received a bachelor of science in electrical  
2 engineering from New Mexico State University in 1981. I  
3 completed a master of business administration with a  
4 concentration in finance from the Anderson School of  
5 Management at University of New Mexico.

6 And I've been employed by PNM for 30 years in  
7 various engineering, business planning, marketing and  
8 regulatory capacities.

9 The purpose of my testimony in this proceeding  
10 was to provide the bill impact or the ratepayer bill  
11 impact associated with installing either SCR or SNCR  
12 technology at San Juan Generating Station.

13 Based on analysis, cost analysis that was  
14 prepared by Black & Veatch, taking into account the  
15 capital costs, the O&M and the depreciable life of the  
16 two technologies, the estimated first year bill impact  
17 for SNCR is \$10.93, or slightly less than \$1 a month.  
18 That represents a 1.4 percent increase to a customer's  
19 bill.

20 SCR technology, on the other hand, represents  
21 a first year bill impact of \$85.31, or slightly more  
22 than \$7 per month. This represents 11. -- an  
23 11.3 percent bill impact to PNM's New Mexico retail  
24 customers.

25 The point that I would note with re --

1 relative to either of these is the SCR increase of  
2 11.3 percent provides no additional capacity with which  
3 to serve PNM's retail loads.

4 MR. ALVIDREZ: And with that, that concludes  
5 our presentation of Mr. Ortiz' testimony, and we would  
6 tender him for questioning.

7 MS. ORTH: Thank you.

8 Mr. Grantham, do you have questions?

9 MR. GRANTHAM: No questions.

10 MS. ORTH: Mr. Roybal?

11 MR. ROYBAL: No questions.

12 MS. ORTH: Mr. Rose?

13 MR. ROSE: No questions.

14 MS. ORTH: Mr. Schlenker-Goodrich?

15 MR. SCHLENKER-GOODRICH: A few questions,  
16 please.

17 CROSS EXAMINATION

18 BY MR. SCHLENKER-GOODRICH:

19 Q. Good morning, Mr. Ortiz.

20 Erik --

21 A. Good morning.

22 Q. Erik Schlenker-Goodrich with NRDC, San Juan  
23 Citizens Alliance and WildEarth Guardians.

24 Just a few questions on your ratepayer impact  
25 analysis.

1           You took a look at solely ratepayer impacts;  
2   is that correct? Or was there a broader -- any sort of  
3   broader economic analysis done of costs?

4           A.    No, sir. I looked at the projected first year  
5   bill impact.

6           Q.    Did you do any sort of quantitative analysis  
7   of the economic costs that would be borne by potentially  
8   the difference between increased health impacts between  
9   SCR and SNCR technologies?

10          A.    No, sir.

11          Q.    Did you do any sort of quantitative analysis  
12   of potential visibility or environmental impacts to the  
13   Class I wilderness or national park areas?

14          A.    No, sir. The purpose of my testimony was  
15   simply to quantify the ratepayer impact.

16          Q.    And one moment, please.

17                No further questions.

18                MS. ORTH: Thank you, Mr. Schlenker-Goodrich.

19                Anyone else?

20                Do Board members have questions?

21                Questions from the Board?

22                If there's no reason, then, not to -- oh, I'm  
23   sorry.

24                Mr. Alvidrez, do you have follow-up?

25                MR. ALVIDREZ: I do have no redirect. Thank

1 you.

2 MS. ORTH: All right.

3 Thank you very much, Mr. Ortiz.

4 MR. ORTIZ: You're welcome.

5 MS. ORTH: You have two more, I believe.

6 MR. ALVIDREZ: Yes. I have two more to  
7 present as a panel.

8 MS. ORTH: All right.

9 MR. ALVIDREZ: And with that, I'd ask  
10 Mr. Lucas and Ms. Fischer to join me up here.

11 MS. ORTH: They're already sworn.

12 MR. ALVIDREZ: If I may proceed.

13 MS. ORTH: Please.

14 DIANE FISCHER and KYLE LUCAS  
15 having been first duly sworn or affirmed, were  
16 examined and testified as follows:

17 MR. ALVIDREZ: Let me start with you,  
18 Ms. Fischer.

19 Can you please state your name and place of  
20 employment for the record?

21 MS. FISCHER: Yes. My name is Diane Fischer.  
22 I work at Black & Veatch.

23 MR. ALVIDREZ: And, Ms. Fischer, did you, in  
24 conjunction with Mr. Lucas, prepare prefiled testimony  
25 that has been submitted as PNM Exhibit C in this case?

1 MS. FISCHER: Yes, sir.

2 MR. ALVIDREZ: And do you have any corrections  
3 to PNM Exhibit C?

4 MS. FISCHER: Yeah. We do have a few minor  
5 typographical corrections that we'd like to make.

6 The first one is on page 9, at the end of line  
7 14. We accidentally left off NO<sub>x</sub> Star Technology as a  
8 technology we consider infeasible. It's in our BART  
9 analysis, but it just got left off of the testimony.

10 On page 17, line 7, the sentence reads right  
11 now, "Additionally, air quality relative values." It  
12 should say "related values" instead of "relative." Just  
13 a typo there.

14 And then on page 24, line 19, the sentence  
15 should read, "PNM Exhibit B&V-4 summarizes the cost of  
16 SNCR at San Juan." So I'd like to just rephrase that  
17 sentence.

18 MR. ALVIDREZ: And, Ms. Fischer, with those  
19 corrections that you've just made, do you adopt your  
20 prefiled testimony here under oath?

21 MS. FISCHER: Yes.

22 MR. ALVIDREZ: Turning to you, Mr. Lucas,  
23 please state your name for the record.

24 And you might get closer to the mike.

25 MR. LUCAS: Certainly.

1           My name is Kyle Lucas.

2           MR. ALVIDREZ:   And where are you employed,  
3   Mr. Lucas.

4           MR. LUCAS:    I've been employed at Black &  
5   Veatch for 17 years.

6           MR. ALVIDREZ:   And, Mr. Lucas, again, did you,  
7   in conjunction with Ms. Fischer, prepare prefiled  
8   testimony in this case that we have marked as PNM  
9   Exhibit C.

10          MR. LUCAS:    Yes.

11          MR. ALVIDREZ:   And you heard the corrections  
12   that Ms. Fischer made with respect to that testimony.

13                 And let me ask, with those corrections, do you  
14   adopt that testimony as your sworn testimony in this  
15   case?

16          MR. LUCAS:    Yes.

17          MR. ALVIDREZ:   At this time, I'd like to move  
18   the admission of PNM Exhibit C into the evidentiary  
19   record.

20          MS. ORTH:    Are there objections?

21                 Hearing none, it's admitted.

22                 (Exhibit PNM C admitted into evidence.)

23          MR. ALVIDREZ:   With that, I'd call on  
24   Ms. Fischer to provide a brief description of her  
25   relevant experience and educational background.

1 MS. FISCHER: I've been now with Black &  
2 Veatch for 19 years. I have a reg- -- I'm a registered  
3 mechanical engineer in the State of Missouri. I am a  
4 graduate of Iowa State University with a bachelor of  
5 science in mechanical engineering.

6 I've spent 19 years with Black & Veatch, and  
7 the entirety of that time on air quality control  
8 projects. My specialty area is NO<sub>x</sub> control. I've spent  
9 the last 11 years or so almost solely on NO<sub>x</sub> control  
10 projects.

11 I also have been involved in three BART  
12 analyses and more than I could count when I was trying  
13 to add it up BACT analyses which are similar. So --

14 MR. ALVIDREZ: And there are certain portions  
15 of the testimony, I think, that you perhaps had the  
16 greater hand in, and if you can kind of summarize for  
17 the Board, hit the high points of the areas of your  
18 prefiled testimony that you concentrated on, please.

19 MS. FISCHER: Sure.

20 I was the project manager for the project,  
21 and -- and Mr. Lucas was the assistant project manager.  
22 Roughly 20 people at Black & Veatch contributed some  
23 part to the work that we did for this BART analysis  
24 since we started the work in February of 2007.

25 So for the testimony today, I'm going to focus



1 more on the engineering and the cost estimate and work  
2 that we did, and Mr. Lucas is going to talk more about  
3 the modeling side of the work that we did.

4 I do want to kind of go through this -- should  
5 I go through the steps so -- that we went through?

6 We followed the EPA guidelines for BART  
7 analysis, and in that -- in that guideline, they ask  
8 that you consider five factors in evaluating BART.

9 The first is to -- the first is the cost of  
10 compliance.

11 The second is energy and non -- nonair quality  
12 environmental impacts.

13 The third factor is the existing control  
14 technologies that are installed.

15 The fourth is the remaining useful life of the  
16 plant.

17 And the last is the degree of visibility  
18 improvement.

19 So those are the five factors that the EPA  
20 BART guidelines require us to look at.

21 And in doing that, they've developed a  
22 five-step process that we followed.

23 The first step is to identify the available  
24 retrofit control technologies that can be applied.

25 The second step is to eliminate those

1 technologies that are considered infeasible.

2 The third is to take the ones that are  
3 feasible and evaluate the amount of control that can be  
4 done with those technologies.

5 The fourth is to determine the impacts. And  
6 that's where you get into the factors that we talked  
7 about before.

8 And then the last is to assess the visibility  
9 impacts of each technology.

10 So those are the steps that we went through.

11 I also want to highlight -- on page 2 of our  
12 testimony is a summary of the -- kind of the history of  
13 our submittals to the NMED. It lists out all the  
14 submittals that we made. We've made quite a number of  
15 them. They typically had to -- fell into one of three  
16 areas.

17 One, the -- the modeling continued to evolve  
18 as we were going through this project. The -- there  
19 continued to be new -- and Mr. Lucas can talk more about  
20 this -- new additions to the modeling methodology. And  
21 so we had several submittals related to that.

22 We also had several submittals related to  
23 specific questions from the NMED. So we responded to  
24 those questions.

25 And then there were a couple that were more

1 generally informational that we made.

2 But the one I want to highlight, of course,  
3 and the main reason we're here today, is the  
4 February 11, 2011, submittal of a revised SNCR BART  
5 analysis. And that has been the focus of this hearing.

6 We submitted that BART analysis in response to  
7 updates in the -- in the SNCR technology from our  
8 original BART that would allow it to meet the  
9 presumptive limit. And so then we resubmitted the BART  
10 analysis.

11 And if you look on page -- finding it -- 17, I  
12 believe -- I'll get there -- 17 of our testimony is the  
13 summary of the costs that we put together for the  
14 revised BART analysis from February, 2011.

15 The end result of that was a reduction of  
16 about 4,900 tons per year of NO<sub>x</sub> at a cost of roughly  
17 \$3,500 a ton.

18 So that -- that concludes what I wanted to say  
19 about our testimony.

20 MR. ALVIDREZ: Mr. Lucas, if you could please  
21 briefly summarize for the Board the portions of the  
22 prefiled testimony that you focused on.

23 MR. LUCAS: Certainly.

24 First of all, I'd like to give you a little  
25 background on myself.

1           I have worked at Black & Veatch, again, for 17  
2 years, initially started as an air quality scientist,  
3 conducting modeling studies and working through various  
4 calculations on air permit applications. I then moved  
5 on to becoming an environmental permitting manager at  
6 Black & Veatch, where I oversaw various strategy  
7 analyses and other licensing projects.

8           For this project, I oversaw the modeling  
9 analyses from 2007 until February, and I've also  
10 assisted as the assistant manager to help facilitate the  
11 engineering studies ongoing throughout this process.

12           As Diane had noted earlier, I will be focusing  
13 on the modeling aspects of the analysis that are  
14 presented here, specifically over the course of the  
15 four-year period.

16           We initially began with the project by  
17 developing a modeling protocol document, using a route  
18 template as our guidance. Through that, we established  
19 our modeling methodologies, the model itself, the  
20 meteorological data, determining data, operational  
21 characteristics of the units, pre- and postcontrol  
22 scenarios, and also specific receptors in the Class I  
23 areas.

24           All of those parameters and methodologies were  
25 submitted to NMED as part of our overall methodology to

1 perform the analyses for the required guidelines.

2 With that, we ended up submitting, as  
3 Ms. Fischer had noted, our February, 2011 analysis.  
4 Before then, and following our June of 2007 -- I'm  
5 sorry -- yeah, June, 2007 analysis, we submitted six  
6 additional modeling analyses that either updated the  
7 modeling for various regions, looked at various air  
8 quality control analyses, updates, or responded directly  
9 to NMED questions or concerns that they had.

10 The submittals that we have made are  
11 summarized on page 2 of our testimony.

12 I'd be happy to answer any questions that you  
13 may have at this time.

14 MR. ALVIDREZ: And with that, we tender these  
15 witnesses for questions.

16 MS. ORTH: Thank you.

17 Mr. Grantham?

18 MR. GRANTHAM: No questions.

19 MS. ORTH: Mr. Roybal?

20 MR. ROYBAL: No questions.

21 MS. ORTH: Mr. Rose?

22 MR. ROSE: No questions.

23 MS. ORTH: Mr. Schlenker-Goodrich?

24 MR. SCHLENKER-GOODRICH: No questions.

25 MS. ORTH: Anyone else?

1 Board members, do you have questions of the  
2 Black & Veatch panel, Ms. Fischer and Mr. Lucas, based  
3 on their testimony?

4 EXAMINATION

5 BY THE BOARD:

6 MS. RYAN: I have some questions regarding the  
7 maximum visibility improvements to each unit and then  
8 that in comparison to your -- and in relation to your  
9 cost effectiveness analysis and so forth.

10 I think it would be beneficial for our Board  
11 if you would walk us through that a little bit and  
12 the -- looking at the -- on page 22 of your Exhibit C,  
13 and moving on to the next couple of pages.

14 Could you summarize how you came to those  
15 opinions and how -- how effective is this SNCR and --  
16 you know, there's some general statements here that it's  
17 going to improve, but -- but I would like you to address  
18 specifically.

19 MR. LUCAS: Certainly. The way we conducted  
20 our engineering analysis and our modeling analysis was  
21 first to develop a baseline of a facility, and as  
22 earlier testified by others, the facility baseline was  
23 the consent decree controls that began in 2005 and  
24 finished in 2009.

25 From that, we addressed various feasible and

1    infeasible technologies, eliminated the infeasible ones  
2    and developed design parameters for those that we took  
3    into the modeling analyses.

4            We looked at each of the feasible controls.  
5    In this case, we'll talk specifically about SNCR.    Okay.  
6    And looked at it as compared to the visibility  
7    improvement gained against the baseline scenario.    We  
8    looked at that also for all the 16 Class I areas that  
9    are within the 300-kilometer radius and also governed by  
10   the guidelines.

11           What we ended up doing, simplistically, is  
12   after we developed the baseline model with all the  
13   parameters that I spoke of earlier, site-specific  
14   characteristics, meteorological data, three-dimensional  
15   meteorological data, various other trained  
16   considerations and so forth, we then modeled the  
17   baseline scenario for the plant for all four units, both  
18   on a facility-wide basis and an individual unit basis,  
19   so that we could contrast and compare.

20           And then we took the SNCR scenario at its  
21   .23 million NO<sub>x</sub> emission rate, per that instant model,  
22   repeated the analysis, and came up with another set of  
23   results on the visibility basis, a deciview basis.

24           And for reference, a deciview is the metric  
25   that the guidelines use.    It is comparable to a percent

1 change in visibility. So roughly a 1 deciview  
2 improvement would be comparable to 10 percent change of  
3 visibility. Okay.

4 From that point, we went ahead and took our  
5 facility baseline and subtracted from the visibility  
6 improvement scene or visibility result scene from the  
7 SNCR scenario, and on a facility-wide basis, the  
8 deciview number is a .25 improvement at one of the 16  
9 Class I areas.

10 On a unit-by-unit basis, the same analysis was  
11 done, and those impacts range from -- on the bottom of  
12 page 22, range up to a .18 deciview change on an  
13 individual unit basis.

14 I should note, though, that it is not  
15 appropriate to add individual units up in this manner,  
16 because you have to look at it as a facility total.  
17 Individual units and their characteristics within the  
18 model act independently and not act as a whole.

19 And so when we looked at individual unit  
20 impacts, it was not Unit 1 operation, Unit 2 operation  
21 and so forth. When you look at total facility  
22 improvements, you want to look at the combined facility  
23 operating and being modeled at the same time.

24 MS. RYAN: So in the comparison you made, 1  
25 deciview equals basically a 10 percent change in --



1 MR. LUCAS: Visibility.

2 MS. RYAN: -- my human eyesight visibility of  
3 what I'm looking at.

4 So could you do the math for me and how -- you  
5 were saying a .25 deciview change?

6 MR. LUCAS: It's about a 2.5 percent  
7 visibility change.

8 MS. RYAN: We're not talking about a lot here.  
9 How is that compared to the SRC, what they  
10 propose with the -- the visibility change?

11 MR. LUCAS: The SCR case that Black & Veatch  
12 submitted had a maximum of about 1.3 visibility  
13 improvement, so about a 1 -- about 13 percent visibility  
14 improvement.

15 The EPA has a threshold of 1 deciview --

16 MS. RYAN: Um-hum.

17 MR. LUCAS: -- which they believe is a human  
18 perceptible change, so 10 percent visibility change.

19 MS. RYAN: So EPA is shooting for a 13 -- if  
20 I'm just hearing you correctly, a -- because I'm not a  
21 scientist here -- a 13 percent, and would the  
22 noncatalytic reduction technology -- would be at --  
23 would you repeat that percentage again?

24 MR. LUCAS: The deciview is .25, so it's a  
25 2.5 percent change.

1 MS. RYAN: 2.5. Okay.

2 MR. LUCAS: Overall the 2.5 percent -- 2.5 --  
3 a change of the .25 deciview by itself is less than the  
4 1 deciview.

5 Overall, though, on a cumulative basis, when  
6 you look at other BART sources and other state and  
7 federal implementations for the Clean Air Act around,  
8 how -- and we spoke earlier about how all those were  
9 modeled together or will be modeled together in the 2013  
10 and 2018 time frames. Those will all contribute to  
11 overall visibility improvements throughout the area.

12 MS. RYAN: Okay.

13 So that in comparison to the -- to the costs  
14 of each of the different technologies, the cost to  
15 achieve a 13 percent change and the cost to achieve a  
16 2.5 percent change -- can you discuss -- walk us through  
17 that?

18 MR. LUCAS: Certainly. I'll turn this over to  
19 Ms. Fischer to walk through some of the more specific  
20 details.

21 MS. FISCHER: Yeah. The -- the costs for SCR  
22 for the four units would be, adding them up real quick,  
23 roughly \$900 million, for that 13 percent visibility.  
24 The costs for the SNCR is, you know, in the 70 million  
25 range.

1           So there's a pretty significant difference  
2     in -- in the costs between the two.

3           MS. RYAN: And not being a scientist,  
4     there's -- I'd just request you to explain the really  
5     large gap between 2.5 percent and 13 percent.

6           MS. FISCHER: There is one in between. It's  
7     called an SCR/SNCR hybrid, which we did analyze. And  
8     the easiest way to -- to talk about that is kind of like  
9     a baby SCR. Instead of building an entire SCR reactor  
10    to go all the way down to the .07 pounds per two NO<sub>x</sub>, you  
11    try and fit as much catalyst into the existing duct or  
12    maybe just expand the duct a little bit and then apply  
13    SNCR with that.

14           So it's a combination of a -- kind of a baby  
15    SCR with a -- with an SNCR system.

16           And the problem with the -- and it did -- it  
17    did kind of hit an intermediate spot. You'd have to  
18    tell us what the deciview permit for that was. I don't  
19    recall it off the top of my head.

20           I don't know if you remember it.

21           MR. LUCAS: I don't either.

22           MS. FISCHER: Okay. But it was between.

23           And -- but the challenge is that as soon as  
24    you add that catalyst and you have to implement all the  
25    changes to the ductwork, you end up having to do all the

1 draft system convergence to make sure that the boiler  
2 can handle the new pressures in it.

3 When you do all that, the end result is that  
4 the cost is, unfortunately, very close to a full SCR,  
5 but the -- but you can't get as much removal. And so  
6 the deciview is not as -- the deciview improvement  
7 compared to the cost is not as great.

8 The guidelines require you to draw a curve --  
9 and I don't have a -- I'm using my hands now -- a curve  
10 that shows kind of the least cost effective line. And  
11 when you plot that SCR/SNCR hybrid on that curve, it's  
12 above the cost effectiveness line, whereas the SNCR and  
13 the SCR are more on that line.

14 In other words, you're going to get a better  
15 improvement for the money you spent with either of those  
16 two technologies, compared to the hybrid. So yes, there  
17 is an in-between, but it tends to not be looked at a lot  
18 because it isn't as cost effective a solution.

19 MS. RYAN: Thank you.

20 MS. FISCHER: Um-hum.

21 MS. ORTH: Other Board questions?

22 MR. CASCIANO: I have a few questions.

23 For the industry standard, I mean, can you  
24 characterize kind of the results of your experience with  
25 either BACT determination or BART determination for NO<sub>x</sub>

1 control and --

2 MS. FISCHER: Sure, yeah.

3 BACT is typically applied on new unit SCRs,  
4 and they're going to be a lot more cost effective on  
5 a -- on a capital and annual cost, mostly because you  
6 are building the plant with the SCR in mind right from  
7 the beginning.

8 And so those -- the costs for a new SCR are  
9 relatively low. You know, it's been a while since I've  
10 done one, but, you know, in the hundred dollars a  
11 kilowatt kind of number, compared to where we are in  
12 this project, which is more like \$300 a kilowatt.

13 When you do a retrofit, you have to go and  
14 modify the existing plant. You're working inside a  
15 plant that already has a lot of stuff in your way. The  
16 ductwork in the arrangement is not set up for the SCR,  
17 so you have a lot of rework to do. And -- so that's  
18 what jacks up the price.

19 The costs at PNM are higher than the industry  
20 average, and the main reason for that is because PNM is  
21 a forced draft unit. What that means is that it pushes  
22 the flue gas through the unit, instead of balancing the  
23 boiler. So the boiler is positive pressure.

24 In a balanced draft unit, the boiler is zero  
25 pressure. So you got a fan coming in to push the flue

1 gas into the boiler, and you have a fan at the outlet  
2 pulling the flue gas, and so the pressure at the boiler  
3 is zero. That's called a balanced draft unit.

4 PNM is a forced draft unit. And so when you  
5 go to do something like an upgrade for SCR, you have to  
6 meet National Fire Protection code NFPA 85, which  
7 requires you to go and reassess the draft impacts to the  
8 Unit.

9 You can't just put a fan downstream of the  
10 boiler without stiffening the boiler, so that it can  
11 handle that pressure, because if you lose the FD fan,  
12 the pushing fan, it will suck in -- suck in the boiler  
13 like a tin can.

14 And so the National Fire Protection code has  
15 written a standard that requires you to go and stiffen  
16 that boiler. And so in this particular situation, we  
17 have to do that. And so that's causing the costs  
18 specifically at San Juan Station to be higher than what  
19 we're seeing in the general industry for SCR retrofit.

20 MR. CASCIANO: So would I be correct in saying  
21 that BART has been determined in the industry to be  
22 anything from low NO<sub>x</sub> burners to selective catalytic  
23 conversion, to selective noncatalytic conversion? Is --  
24 you know, is there a standard -- it doesn't seem like  
25 there's a one size fits all, because every facility is

1 different, and it drives wide variations in the costs  
2 for the retrofitting.

3 MS. FISCHER: Yes, sir. The standard is  
4 actually specifically stated that you have to do a  
5 case-by-case analysis. One of the challenges that we're  
6 seeing is a lot of these BARTs -- even though it's been  
7 a bunch of years, very few BART determinations are  
8 final. In fact, I think the only one I know of is the  
9 port -- is Portland Generating.

10 MR. LUCAS: Boardman station in Oregon.

11 MS. FISCHER: Boardman station is the only  
12 BART that I'm aware of that is final and approved by EPA  
13 and official.

14 All the other BARTs that I'm aware of are  
15 still out there in some stage of public comment or  
16 evaluation. So --

17 MR. CASCIANO: Are you aware of any other  
18 BARTs for -- that have been rejected for selective  
19 catalytic reduction technology?

20 MS. FISCHER: The --

21 MR. CASCIANO: Any other facilities where  
22 they've determined that -- similar to PNM's position,  
23 that it's not cost effective for that technology as a  
24 BART, and they've gone to their selective noncatalytic  
25 or gone to just low NO<sub>x</sub> burners as the best available

1 retrofit?

2 MS. FISCHER: The draft in Colorado for Craig  
3 Station and -- is -- there are three units at Craig, and  
4 they have been asked to put two -- one SCR on Unit 2 at  
5 Craig and SNCR, which is the technology we're talking  
6 about for here, on -- is it 1 and 3, I believe. So  
7 that's -- that's -- but that's a draft.

8 That hasn't been finally approved by the EPA;  
9 is that right?

10 MR. LUCAS: There are several other facilities  
11 in Wyoming.

12 MS. FISCHER: Oh, yes.

13 MR. LUCAS: An initial determination by the  
14 facility through the BART was that SCRs or SNCRs were  
15 not feasible or not cost effective, but the state later  
16 came back and determined that the SNCRs to be that  
17 chosen technology.

18 A lot of those are being contested right now.  
19 But I don't know what the current status is.

20 MR. CASCIANO: Okay.

21 MS. FISCHER: The four -- the other thing is  
22 the Four Corners, which is governed by EPA Region 9 --  
23 the EPA determination -- original determination was SCRs  
24 on all five units there. I think the current proposal  
25 out there is to shut down 1, 2 and 3 and just continue



1 to run 4 and 5 with the SCRs.

2 But their NO<sub>x</sub> -- they're starting NO<sub>x</sub> compared  
3 to PNM was significantly higher. They were at like .5  
4 whereas, PNM is starting at like .3, so --

5 MR. LUCAS: What Diane is alluding to is the  
6 dollar per ton that you're also kind of getting to as  
7 the threshold, Four Corners had a higher initial NO<sub>x</sub> --  
8 uncontrolled NO<sub>x</sub> rate of the middle 4s, I believe, .4,  
9 whereas San Juan --

10 MS. FISCHER: 4.5.

11 MR. LUCAS: -- is down to .3.

12 And the cost to install SCR at San Juan again  
13 is different than the cost to install at the San Juan  
14 Station simply because of some of the more complex  
15 features of -- site-specific features that San Juan has,  
16 including the balanced draft version that Ms. Fischer  
17 spoke of.

18 MR. CASCIANO: Okay.

19 MS. FISCHER: I apologize for not remembering  
20 the exact thing in Craig. I know at least one has an  
21 SCR and one has SNCR. I just can't remember if it's two  
22 at Craig that have SCR or one. But that could be  
23 verified.

24 But anyway, the only one that's final that I'm  
25 aware of is Boardman. All the others are in some state

1 of review or contesting.

2 MR. LUCAS: I have worked on five large BART  
3 projects at eight different plants for 23 different coal  
4 units, and I don't have a final determination yet from  
5 the EPA on any of those. The states have submitted  
6 their determination, and with their determination  
7 submitted their various SIPs to the EPA in various  
8 regions off the country, but we have yet to hear on any  
9 of those what the final determination's been.

10 MS. RYAN: We have no precedent for this Board  
11 to work off of on what the likelihood that EPA would  
12 approve our SIP if this was implemented?

13 MS. FISCHER: Not much.

14 MR. LUCAS: I can't speak to that.

15 It has not been very successful in the other  
16 projects I've worked on. Whether -- and I don't know  
17 what the drivers are on those, whether or not the EPA  
18 has yet to begin reviewing or whether or not the EPA is  
19 opening it back up to starting a new review process.  
20 But it has yet to be resolved and finalized in a SIP.

21 MR. CASCIANO: So back to your visibility  
22 modeling, does the model take into effect other sources?  
23 Is that --

24 MR. LUCAS: Not this modeling, no. The  
25 modeling done for San Juan was specific to San Juan, San

1 Juan's baseline and San Juan's future AQC technologies  
2 that were being analyzed. It does not look at any other  
3 sources in the area.

4 MR. CASCIANO: Okay. So you don't have any  
5 information on what percentage of the total air shed or,  
6 you know, sources in the area this source represents.

7 MR. LUCAS: No. It was not required as part  
8 of the BART -- BART submittal.

9 MR. FULFER: What are the state -- what are  
10 the surrounding states' presumptive levels? Are they  
11 the same as what we're looking at here, or --

12 MS. FISCHER: The presumptive levels are a  
13 function of the boiler type and the fuel. They're not  
14 by state. They're by the fuel you burn and the type of  
15 boiler you have. So they have the same list of  
16 presumptive levels that San Juan has, it's just a matter  
17 of looking at their boiler and fuel type to figure out  
18 what line to go on on the table. That table is in the  
19 EPA guidelines.

20 MS. ORTH: Other Board questions?

21 Mr. Alvidrez, do you have follow-up?

22 MR. ALVIDREZ: I do, just a -- one question.

23 Mr. Lucas, Board Member Casciano asked you a  
24 question about the modeling you did for San Juan  
25 Generating Station, whether it took into account other

1 sources, and I wanted to clarify on the record is there  
2 other modeling, such as the WRAP modeling that was done,  
3 that looks at a comprehensive -- comprehensive number of  
4 sources and their impacts?

5 MR. LUCAS: Yes. There is other modeling that  
6 has been done and will be done. NMED indicated earlier  
7 that the 2013 and 2018 will be revisited, and at that  
8 point, I believe, they will be including -- or a  
9 contractor will be including all the various BART source  
10 changes that will happen, along with any other state or  
11 federal implementation proceedings or proposals going  
12 in.

13 And from that, you will end up with a new  
14 determination at each of the Class I areas as to whether  
15 or not visibility is truly improving beyond what NMED  
16 stated earlier.

17 MR. CASCIANO: And does EPA specify what  
18 improvement needs to happen, or is it just that it needs  
19 to be improving?

20 MR. LUCAS: There is -- they have established  
21 a glide path for each of the Class I areas, and that  
22 glide path is basically denoted to achieve a natural  
23 visibility condition by 2064. So simplistically, you  
24 would take the -- take where you're at today, and on an  
25 access view quite high to where you're going to be in

1 the future, and that line would draw a glide path.

2 So every few years various circulators would  
3 go back and reevaluate where everybody's at, and you  
4 will either be above the line or below the line at that  
5 point with these implemented changes.

6 And technically, if you're above the line,  
7 you're going to be looking at additional changes  
8 throughout BART sources or possibly throughout other  
9 non-BART sources and other air emission sources within  
10 an area, in other words, to try to further the progress  
11 towards that natural visibility condition.

12 MR. CASCIANO: So is that comprehended in the  
13 analysis you did for this BART?

14 MR. LUCAS: No. We -- the analysis we did was  
15 a single point. It was looking at what visibility  
16 improvements you could achieve at the 16 Class I areas  
17 by looking at those control technologies that are  
18 feasible for San Juan. The analysis provided here in  
19 the Exhibit C focuses on the SNCR technology and those  
20 improvements that can be seen and achieved.

21 MR. CASCIANO: Okay.

22 MS. FISCHER: If it's okay, the one thing I'd  
23 like to clarify on that is we did a BART analysis for  
24 San Juan, and then the NMED takes that BART analysis and  
25 that modeling that we did and plugs it into their

1 broader model of the whole state. So that, you know,  
2 we're feeding a piece to the bigger work that NMED does.

3 MS. ORTH: Is there anything else,  
4 Mr. Alvidrez?

5 MR. ALVIDREZ: No.

6 Thank you very much.

7 MS. ORTH: Anything else?

8 MS. RYAN: I would like to make one comment,  
9 and it's not necessarily specific to these two  
10 witnesses, but just in general to all of the parties  
11 involved.

12 I'm very interested, and I'm sure other Board  
13 members are, too, in the -- the cost effectiveness of  
14 each of these different types of technologies, and our  
15 frustration in wanting to make a difference in our  
16 environment and improve the regional haze, and, also,  
17 torn with the huge economic impact to our state and our  
18 citizens.

19 So I know the parties have briefed and  
20 analyzed and -- if you could just keep that in the back  
21 of your mind, that that is what -- that is what I  
22 personally am wrestling with, is wanting to make a  
23 visible change and do something meaningful and worth  
24 everyone's time, and at the same time not wanting to  
25 burden our state with additional economic burdens in a

1 state that it currently is, which is under a lot of  
2 burden.

3 So I guess I just want the parties to keep  
4 that in mind as you continue to present testimony to our  
5 Board over the next couple of days and that you would  
6 try to address that in some more detail for us.

7 MS. ORTH: All right.

8 Anything else?

9 Any reason not to excuse the witnesses?

10 No?

11 Thank you very much, Ms. Fischer and  
12 Mr. Lucas.

13 Mr. Alvidrez.

14 MR. ALVIDREZ: That concludes our -- our  
15 direct case.

16 MS. ORTH: All right. Thank you.

17 Let's talk about where we are in 11-01.

18 I see Mr. Rose's hand.

19 MR. ROSE: If you can see me over  
20 Mr. Schlenker-Goodrich. He's such a big guy, sort of.

21 MS. ORTH: Yes.

22 Just one second --

23 MR. ROSE: Sure.

24 MS. ORTH: -- Mr. Rose.

25 Board, the other witnesses for whom notice of

1 intent to present technical testimony was submitted,  
2 such that they will be in front of you, is -- as you've  
3 seen this morning, is from San Juan Coal Company,  
4 represented by Mr. Roybal back there.

5 He does have one of his witnesses with him,  
6 that's Mr. Cline. The other two witnesses are in  
7 Farmington area. He would like to present all three of  
8 his witnesses at the same time. And so he'd like to put  
9 on his whole presentation tomorrow when we're in  
10 Farmington.

11 That leaves Mr. Rose and  
12 Mr. Schlenker-Goodrich who are offering more something  
13 in the nature of public comment.

14 But let's hear them out.

15 MR. ROSE: Madam Hearing Officer, we have no  
16 testimony. We submitted our written public comment  
17 yesterday.

18 But what I was going to do was note that you  
19 have a couple legislators here who want to speak and  
20 have an interim committee meeting starting at 1:00. And  
21 so they wanted to be able to speak before they go back  
22 into session, in the next 25 minutes.

23 So I wanted to alert you to that fact.

24 MS. ORTH: Thank you for that.

25 MR. ROSE: So you can make accommodation for



1       them.

2               Thank you.

3               MS. ORTH: All right. Thank you for that.

4               Mr. Schlenker-Goodrich, would you describe  
5       what your intention is?

6               MR. SCHLENKER-GOODRICH: Yeah. We'd like to  
7       simply summarize our written public comments that we  
8       submitted on Friday, May 27th. We think we could do  
9       that in less than five minutes. And I decided not to do  
10      public comment, but I apparently signed up on the wrong  
11      form. So I can do that in the afternoon, which is fine  
12      with me.

13              MS. ORTH: All right. Thank you.

14              Mr. Roybal.

15              MR. ROYBAL: Madam Hearing Officer, we just  
16      have two witnesses, not three.

17              MS. ORTH: Oh, I'm sorry. Great.

18              So legislators -- I'm sorry. It's hard to see  
19      out there.

20              Who would like to speak now, to make public  
21      comment?

22              Testimony is taken under oath and is subject  
23      to questions.

24              If you will please introduce yourself.

25              MR. NEVILLE: My name is --

1 THE REPORTER: Would you raise your right  
2 hand, please.

3 STEVE NEVILLE  
4 having been first duly sworn or affirmed, was  
5 examined and testified as follows:

6 DIRECT TESTIMONY

7 THE REPORTER: And would you please state and  
8 spell your name, please.

9 MR. NEVILLE: My name is Steve Neville,  
10 N-E-V-I-L-L-E. I'm state senator for District 2, which  
11 surrounds the San Juan Generating Station in  
12 Northwestern New Mexico.

13 I live in -- I'm a resident of Farmington, New  
14 Mexico, and we're down here for a Water and Natural  
15 Resources Committee meeting. And I appreciate your  
16 taking the time to let me enter a few comments.

17 As you can imagine, the concerns of what  
18 happens with the environmental issues in San Juan County  
19 are very important to us. We have a large facility. I  
20 think most of you are aware that San Juan Generating  
21 Station is located up there.

22 San Juan Generating Station plus the coal  
23 miners that fuel that facility constitute nearly 1,000  
24 jobs in our community. That is a tremendous economic  
25 driver for our local area. They also pay the state

1 millions of dollars in taxes every year, as well as  
2 contributing greatly to the local economy in terms of  
3 material supplies, those kind of things.

4 That's all the selfish reasons why I'm here.

5 But let's look at it from the State of New  
6 Mexico. And as a legislator, I certainly have to  
7 consider those issues, as well.

8 The State of New Mexico derives fully one-half  
9 of the generating capacity -- one-half the electricity  
10 from San Juan Generating Station. The rest of it they  
11 have to get from out of state or the nuclear plant at  
12 Palo Verde and so forth. That's a tremendous economic  
13 situation for the State of New Mexico.

14 Everyone knows that coal is the cheapest  
15 method in which to generate electricity. And San Juan  
16 Generating Station has made a gallant effort over the  
17 past few years to be very friendly to the environment  
18 and certainly to those of us who live here -- live  
19 there. We believe that San Juan Generating Station has  
20 done a tremendous job in protecting the environment, as  
21 well as helping the citizens of New Mexico prosper  
22 around the state.

23 I would urge that you adopt this plan that  
24 you're considering. The one that's proposed by EPA will  
25 greatly enhance -- increase the cost of electricity to

1 all the citizens of New Mexico. And while you look at  
2 it as a dollar per person amount, that amount when you  
3 take it over the whole state has a tremendous economic  
4 benefit.

5 With those comments, I'll stand for any  
6 questions or conclude my remarks, and I appreciate the  
7 opportunity to let me talk. Thank you.

8 MS. ORTH: Thank you, Senator.

9 Questions?

10 No.

11 Thank you very much.

12 PAUL BANDY

13 having been first duly sworn or affirmed, was  
14 examined and testified as follows:

15 DIRECT TESTIMONY

16 THE REPORTER: Would you state and spell your  
17 full name, please.

18 MR. BANDY: I'm Paul Bandy, P-A-U-L B-A-N-D-Y.  
19 I'm a state representative, District 3, which is Eastern  
20 San Juan County.

21 I want to echo what Senator Neville said. I  
22 think they've done a lot of -- made a lot of investments  
23 to improve the emission -- to lower the emission rates  
24 for the San Juan Generating Station, and I think that --  
25 the plan the state proposes that's before you I think is

1 a -- I think that the PNM thinks that they can live  
2 within that and still keep the utility rates at a  
3 reasonable rate -- level in New Mexico.

4 It's important for all the state to have a  
5 reasonable utility -- electrical rate, because  
6 everything that we do, everything we buy and all the  
7 jobs that we produce is dependent in one way or another  
8 on electrical supply, and that -- and supplying that at  
9 a reasonable rate.

10 My personal concern is from our neighbors,  
11 whose -- many of them work at the power plant or their  
12 jobs are associated with that. We've already -- we have  
13 two power plants in San Juan County. The San Juan  
14 Generating is on the north side of the San Juan River.  
15 The Four Corners Power Plant is on the south side and on  
16 the Navajo Reservation.

17 And they've already decided that because of  
18 the environmental regulations they're going to shut down  
19 three of the five plants -- three units that produce  
20 electricity there. So that's going to be a tremendous  
21 hit for jobs in our area. And we certainly don't need  
22 to threaten any more of the jobs.

23 The other is about the tax base in San Juan  
24 County. 93 percent of San Juan County is government  
25 land of one kind or another, either controlled by the

1 BLM or the State of New Mexico or the Navajo  
2 Reservation. And so there's not much of a tax base  
3 there if it's not for the industrial segment. And the  
4 San Juan Generating Station has a tremendous effect on  
5 the county tax base.

6 That's would conclude my testimony. We'd urge  
7 you to adopt the plan that's before you.

8 MS. ORTH: Thank you, Representative.

9 Questions?

10 No?

11 Thank you very much.

12 MR. BANDY: Thank you.

13 RAY BEGAY

14 having been first duly sworn or affirmed, was  
15 examined and testified as follows:

16 DIRECT TESTIMONY

17 THE REPORTER: Would you state and spell your  
18 full name, please.

19 MR. BEGAY: Thank you.

20 My name is Ray Begay. I'm in the state House  
21 of Representatives, serving my 13 years. And I'm here  
22 to testify on behalf of my constituency and also on  
23 behalf of District 4 in San Juan County.

24 I am a permanent resident of San Juan County  
25 and has been for many, many, many years. I live in

1 Shiprock. Also lived in Red Valley, Arizona, on the New  
2 Mexico side, near the border of Red Valley and Mitten  
3 Rock area. And my families comprise of a ranch -- being  
4 a rancher, farmer, and just -- just common people and  
5 professional people, as well.

6 And having said that, I was looking at the  
7 several indicators on this hearing being conducted today  
8 and some of the recommendations that are being made.  
9 And there's always a negative and always a positive in  
10 such a hearing as this, and being able to look at all  
11 the pictures and all the numbers and seeing what would  
12 be the best practice here in the State of New Mexico as  
13 it is.

14 And the Public Service Company of New  
15 Mexico -- obviously, the Navajo Nation or -- is a  
16 stakeholder in this whole process. And many Native  
17 American, predominantly Navajo, live off the reservation  
18 in Farmington, Aztec, Bloomfield, La Plata and Kirtland,  
19 Waterflow and those areas, and some of them had  
20 established permanent residence because of the jobs  
21 nearby.

22 Four Corners is very unique, and its coal,  
23 oil and gas, helium and other natural mineral product.  
24 And I think for many, many years, the State of New  
25 Mexico had benefitted from the revenues that are

1 generated through time. And we have been very healthy  
2 here in the State of New Mexico, were able to gain many  
3 employment for people that otherwise would not have that  
4 opportunity to.

5 Also, the Navajo Nation government itself had  
6 also benefitted. And many of my relatives and friends  
7 and people that I communicate with at a professional  
8 level that are Navajos have really sustained themselves  
9 through this economic endeavors. And some had retired,  
10 working for the -- for PNM and BHP Billiton and other  
11 public service company, and live in a very comfortable  
12 lifestyle now and really appreciate the corporations  
13 coming and doing what they had to do.

14 And I live also in Shiprock, I live along the  
15 San Juan River, and I have a farm there. And so I see  
16 the pollutions that goes on 24/7, and it's been there  
17 for many, many years. And so there seem to be some  
18 question now who would be the caretaker of the  
19 environmental impact, would it be the federal  
20 government, would it be the State of New Mexico.

21 And I have some information on the San Juan  
22 Generating Station that employs 394 full-time workers,  
23 and 20 percent of those are of Native American descent,  
24 predominantly Navajos. The San Juan Mine also employ  
25 526 people, of whom 46 percent are Native Americans.



1           And the plants itself pays millions of dollars  
2 a year in government taxes, which I alluded to earlier.  
3 And to kind of give you an accurate figure is  
4 \$54.8 million in coal royalties and taxes paid to  
5 governments and tribes, 6.4 million paid in property tax  
6 to San Juan County.

7           And also, that San Juan also purchased about  
8 30 million in materials and supplies every year and hold  
9 approximately 122 million contracts for outside  
10 services. The plant pays 280 million each year for coal  
11 and ash removal.

12           So the productivity, the economy that's  
13 generated in the Four Corners area is very beneficial to  
14 the Navajo Nation, to tribes and to the City of  
15 Farmington and to San Juan County in general.

16           I would urge this body to make that  
17 determinations that the environment -- the Environmental  
18 Improvement Board should adopt and draft a State  
19 Implementation Plan as proposed by the New Mexico  
20 Environmental Department. So I'm here to urge you as a  
21 body to make that determination. I think it's -- I  
22 think it's worthwhile that we keep all the  
23 decision-making here in the State of New Mexico.

24           I appreciate your time and attention to my  
25 request. Thank you.

1 MS. ORTH: Thank you, Representative Begay.  
2 Are there other legislators?

3 NATE GENTRY  
4 having been first duly sworn or affirmed, was  
5 examined and testified as follows:

6 DIRECT TESTIMONY

7 THE REPORTER: Would you state and spell your  
8 full name, please.

9 MR. GENTRY: My name is Nate Gentry,  
10 representative, House District 30, N-A-T-E G-E-N-T-R-Y.

11 THE REPORTER: Thank you.

12 MR. GENTRY: Thank you, Madam Chair, members  
13 of the Board.

14 My name is Nate Gentry. I represent House  
15 District 30, located in Albuquerque.

16 I'm here today to urge the Board to draft the  
17 State Implementation Plan as proposed by the NMED.

18 As I'm sure the Board is aware, the federal  
19 plan costs significantly more than does the state plan.  
20 Not only is there concern certainly from my perspective,  
21 the relative household impact that the proposed federal  
22 plan would have, but there's also significant economic  
23 concerns.

24 The federal -- proposed federal plan costs  
25 roughly 10 times more than would the state plan, and

1 this would burden particularly the portion of the state  
2 that has been particularly -- particularly hard hit by  
3 the recent economic downturn, specifically San Juan  
4 County.

5 What is also of concern -- or from my  
6 perspective, the state plan has -- strikes a much better  
7 balance between both the environmental consequences as  
8 well as the economic considerations.

9 So I would again urge that the Board to accept  
10 the state's -- NMED's plan, State Implementation Plan.

11 With that, I'd stand for any questions.

12 MS. ORTH: Thank you very much.

13 Other legislators?

14 Other legislators?

15 No?

16 Board, are we ready for a lunch break now?

17 MS. PEACOCK: Yes.

18 MS. ORTH: Yes.

19 MS. PEACOCK: How much public comment is left,  
20 or how -- how much time is left?

21 MS. ORTH: I can -- how many are here to make  
22 public comment in EIB 11-01, that's the regional haze  
23 State Implementation Plan revisions?

24 One, two, three, four -- all right.

25 Is there anyone here specifically to offer

1 public comment in EIB 11-02, which is a related but not  
2 identical matter?

3 Anyone at all?

4 Okay.

5 MS. PEACOCK: We should continue, then, and --

6 MS. ORTH: All right.

7 MS. PEACOCK: And then it's my understanding  
8 we would go to Farmington.

9 MS. ORTH: That's correct. Then we're done --

10 MS. PEACOCK: We're done here and -- yeah.  
11 Let's finish up here.

12 THE REPORTER: Can we take like five minutes,  
13 though, please?

14 MS. PEACOCK: Cheryl, thank you. Absolutely.

15 MS. ORTH: Yes. Thank you.

16 Let's take five minutes.

17 (Proceedings in recess from 12:49 p.m. to  
18 1:05 p.m.)

19 MS. ORTH: We are back after a break.

20 We have finished the technical testimony that  
21 will be heard in Santa Fe. We have a little more  
22 technical testimony to hear tomorrow in Farmington from  
23 San Juan Coal Company, but that will be up at the  
24 college in Farmington starting at 9:00 a.m. tomorrow.

25 So what we're going to do for the rest of our

1 time together today is accept the last of the public  
2 comment.

3 What I have is Norma McCallan, Paul Gessing,  
4 Beverlee McClure, Elizabeth Slota and Erik  
5 Schlenker-Goodrich.

6 Is there anyone else who is going to want to  
7 make public comment?

8 I see no hands.

9 Let's begin with Ms. McCallan.

10 MS. MC CALLAN: Do I come up there?

11 MS. ORTH: Yeah. Come up here, please.

12 All comment is taken under oath and is subject  
13 to questions from the Board.

14 And I'll ask you to keep your comments under  
15 five minutes, if you can.

16 NORMA MC CALLAN

17 having been first duly sworn or affirmed, was  
18 examined and testified as follows:

19 DIRECT TESTIMONY

20 THE REPORTER: Would you state and spell your  
21 full name, please.

22 MS. MC CALLAN: Norma McCallan,  
23 M-C-capital-C-A-L-L-A-N.

24 I am a long-term resident of New Mexico. I  
25 deeply love it, and I feel very privileged to live in

1 this state, having grown up in another state, back east.  
2 I cherish its land, its water, its people, its  
3 magnificent blue skies.

4 I support not your plan, but the EPA's  
5 proposed BART plan to reduce the NO<sub>x</sub> emissions which will  
6 reduce them by 80 percent on the San Juan Generating  
7 Statement -- Generating Station. It is a very positive  
8 step, I think, in a very long history of pollution  
9 emanating from the Four Corners area.

10 You can see that brown -- you can even see the  
11 brown haze sometimes in Santa Fe. You can certainly --  
12 it just gets deeper and deeper and thicker and thicker  
13 as you head toward Farmington, as I did several weeks  
14 ago.

15 And I think that your plan is woefully  
16 inadequate to do the job.

17 I went to the Environment Department's public  
18 hearing in May here in Santa Fe, and PNM was there, and  
19 they really emphasized the -- what they considered the  
20 extreme costs to their customers as being the reason  
21 that they were a -- preaching this separate smaller  
22 plan. And they pointed out that they have a lot of  
23 low-income customers in their area, which I certainly  
24 wouldn't deny at all.

25 New Mexico is a very low-income state. And so

1 it's almost at the bottom in the per capita income in  
2 the country. And I just saw recently a figure that it's  
3 one of four states where 20 percent of the people have  
4 to live on food -- exist on food stamps. So that's not  
5 an issue.

6 But I think they have a -- grossly exaggerated  
7 this 20 -- this \$80 a year increase that it would --  
8 that people would see on their bills. I'm not an  
9 engineer, and I'm not a mathematician, but people who  
10 are have pointed out that they think the figures are  
11 really exaggerated and it would be more like a much more  
12 reasonable \$10 an actual year.

13 And we have to remember that the poor in New  
14 Mexico are -- also suffer disproportionately from the  
15 environmental effects of air and water pollution, and we  
16 know that there's a huge amount of asthma and  
17 lung-related diseases in the Four Corners area, far  
18 greater than anywhere in the rest of the state.

19 In fact, local residents often consider  
20 themselves to be a sacrifice zone, creating energy for  
21 the rest of the country through the oil and gas and the  
22 two large power plants.

23 Haze is smog, and smog is full of pollution.  
24 So it's not just a visibility issue. It's clearly a  
25 major health issue. And it seems to me that PNM is

1 thinking much more about its corporate profits than it  
2 is about the well-being of its customers.

3 But if you do want to look at the visibility,  
4 which is important in its own right, tourism is the  
5 second -- after the oil and gas industry, tourism is the  
6 second highest economic driver in New Mexico. And  
7 tourists don't like to see smoggy skies.

8 There are 16 what they call -- the EPA calls  
9 Class I national parks, national monuments and  
10 wilderness areas within a 100-mile radius of the Four  
11 Corners plant, Bandelier, which is a hop, skip and a  
12 jump from Santa Fe, being one of them. And if we want  
13 to stay the land of enchantment, we had -- and keep our  
14 clear -- clean, sparkling blue skies, that we have in --  
15 still in a good part of the state, then we are to be  
16 very seriously supporting EPA's BART plan.

17 The national parks bring in something like  
18 18,000 jobs a year and thousands and thousands of  
19 tourists. So visibility is important in that respect.

20 And I just want to urge you -- I appreciate  
21 the Environment Department in New Mexico. They've done  
22 a lot of good things over time. Last year they did  
23 endorse the EPA plan, and now with new members, a new  
24 administration, they're coming up with their own.

25 But I would strongly urge you to support the



1 EPA's plan, which I think is very heavy thought out, it  
2 uses technology which is readily available everywhere,  
3 and it will be to long-term good of the state, not just  
4 the short-term good of corporate profits.

5 So thank you.

6 MS. ORTH: Thank you, Ms. McCallan.

7 Paul Gessing.

8 PAUL GESSING

9 having been first duly sworn or affirmed, was  
10 examined and testified as follows:

11 DIRECT TESTIMONY

12 THE REPORTER: Would you state and spell your  
13 full name, please.

14 MR. GESSING: Paul, G-E-S-S-I-N-G, Gessing.

15 THE REPORTER: Thank you.

16 MR. GESSING: I come here today representing  
17 New Mexico's only free market oriented think tank. We  
18 have an interest in this particular issue because we  
19 support energy policies that maximize personal  
20 responsibility and individual choice. We're here in  
21 support of the draft State Implementation Plan as  
22 proposed by the New Mexico Environmental Department.

23 While we do have quibbles and have concerns  
24 about the general process involving the Environmental  
25 Improvement Board, and that is a consistent thing from

1 the previous administration into the current  
2 administration, our view is that state dictates are  
3 better than federal dictates from Washington, DC. And  
4 so we would rather have decision-making done here  
5 locally rather than coming top-down from Washington.

6 New Mexico businesses have been hit hard by  
7 economic downturn. Energy costs are something that they  
8 have very little control over, and yet, as we've seen in  
9 recent years, energy costs, electricity costs in  
10 particular, have risen dramatically.

11 We have also studied the impact of New  
12 Mexico's renewable portfolio standard, a state-passed  
13 standard that we estimate will increase energy costs --  
14 electricity costs to consumers by \$2.3 billion over the  
15 next 10 years.

16 So New Mexico is not sitting on its hands. We  
17 have many different policies in place that are designed  
18 to address very real environmental concerns. This  
19 particular state initiative would have significant  
20 salutary impacts on air quality and the quality of life  
21 of people living in and around the area affected by the  
22 Four Corners plant.

23 And so we do support this initiative and  
24 strongly urge the Environmental Improvement Board to  
25 adopt it.

1 Thank you very much.

2 MS. ORTH: Thank you, Mr. Gessing.

3 Beverlee McClure.

4 BEVERLEE MC CLURE

5 having been first duly sworn or affirmed, was  
6 examined and testified as follows:

7 DIRECT TESTIMONY

8 THE REPORTER: Would you state and spell your  
9 full name, please.

10 MS. MC CLURE: Beverlee McClure,  
11 B-E-V-E-R-L-E-E, McClure, M-C-capital-C-L-U-R-E.

12 THE REPORTER: Thank you.

13 MS. MC CLURE: Thank you.

14 Madam Chair, members of the committee, as I  
15 said, I'm Beverlee McClure. I'm the president of the  
16 Association of Commerce and Industry, and we serve as a  
17 statewide Chamber of Commerce.

18 In this capacity, we're the only association  
19 that represents all business, large and small and all  
20 geographic sectors in our state. And so I sit here  
21 today in front of you on behalf of the employers. I  
22 will tell you that PNM is a member of the Association of  
23 Commerce and Industry, as are many other employers that  
24 would be negatively impacted if we were to adopt the  
25 federal plan.

1           And I know the issue before you is hard, and  
2           you've heard lots of testimony. I think the thing to  
3           note is that PNM is not resisting addressing the  
4           problem, but more importantly, but how to address the  
5           problem, and how to do it in a way that helps the  
6           environment at the same time without continuing to hurt  
7           the economy and the employers in our state.

8           You probably know that the State of New Mexico  
9           is at an all time high with unemployment. Even though  
10          we saw a dip in that the last month, the explanation for  
11          that is an unfortunate one. Not because people went  
12          back to work, but because their benefits have expired  
13          and their jobs are not there. So we stand in a time  
14          when we have to look at the economic impact along with  
15          the environmental impact, and that's what I sit here and  
16          ask you to do today.

17          You know, because the state did not have an  
18          implementation plan that was adopted, through no fault  
19          of their own, PNM found that they were at the mercy of  
20          the federal EPA. The EPA came in and has recommended a  
21          technology that is pretty expensive, very expensive,  
22          \$750 million to \$1 billion.

23          So what PNM basically is asked and what the  
24          employers of the state is asked is is there a way to do  
25          this, where we don't have to increase the costs, because

1 the business is going to bear the brunt of that, because  
2 of the usage that we have with our employers in the  
3 state.

4 And so with that, the State Implementation  
5 Plan took another look at this and said there is a way,  
6 and there is a technology where we can address the issue  
7 in the San Juan -- with the haze issue, but at the same  
8 time be at a lower cost to PNM, which, in turn, will be  
9 a lower cost for the employers in our state.

10 And so that's what we're asking for today, is  
11 to look at that State Implementation Plan. The EPA  
12 recommendation doesn't seem to be based on a study of  
13 the costs, the impact, even though by their own rules,  
14 part of the recommendations for any retrofit technology  
15 has to be based on costs and on economic impact, and it  
16 does not appear that happened.

17 So the State Implementation Plan is a chance  
18 for us to take another look at this, to look at how to  
19 work together to balance the environment with the  
20 economy. So on behalf of the employers and the state, I  
21 ask you to consider that and consider the ripple effect  
22 of that, because this is a time in our state when it's  
23 very important.

24 Thanks so much.

25 MS. ORTH: Thank you, Ms. McClure.

1 Elizabeth Slota?

2 MS. SLOTA: My name --

3 THE REPORTER: Would you raise your right  
4 hand, first.

5 ELIZABETH SLOTA

6 having been first duly sworn or affirmed, was  
7 examined and testified as follows:

8 DIRECT TESTIMONY

9 THE REPORTER: And now, please, your name.

10 MS. SLOTA: Elizabeth Slota, S-L-O-T-A.

11 THE REPORTER: Thank you.

12 MS. SLOTA: I'm addressing you today as a  
13 member of the PNM Forerunners, a retirement group of  
14 former employees. I am a member of that association by  
15 association with my deceased husband. I am considered a  
16 surviving spouse. But I also want to address you as a  
17 citizen of New Mexico, about one month short of 43  
18 years.

19 I also came to New Mexico not knowing what it  
20 was, where it was even. My husband, Michael, was in the  
21 service at the time, stationed at Kirtland. And fell in  
22 love with New Mexico within 24 hours, and have stayed  
23 since. And I've been asked by the Forerunners to do  
24 this, but as I said, I also want to address you as a  
25 citizen.

1           The EPA is a federal government entity, and  
2           the federal government tends to think in one size fits  
3           all. So their plan is probably the same plan that  
4           happens in Michigan, New Jersey, where I come from, and  
5           anyplace else.

6           I think that the state now has the opportunity  
7           to develop a plan that will be the best for New Mexico,  
8           not only in emissions controls and effectiveness on  
9           health issues, visibility impact, but the economic  
10          impact of this plan.

11          The state proposal cost to the residential  
12          customer is estimated at \$11.50 per year. The EPA  
13          program would be \$82 a year. And we all know that  
14          estimates tend to go up rather than down.

15          But more importantly, not only will the  
16          resident -- residential customer be played -- be paying  
17          more per year, but it will also affect the cost of  
18          businesses, the supermarket, doctors' offices, public  
19          buildings, and state parks for tourists.

20          And the way that the businesses will recoup  
21          their increased energy cost will be by higher prices in  
22          the supermarket, the doctors' office. The way the  
23          government, state buildings, state parks, et cetera,  
24          will recoup their increased cost is through increased  
25          taxes. I don't want either one of those. I'm sure no

1 one wants either one of those.

2 So I would like you to consider the proposed  
3 state plan.

4 And also, the emissions controls are being met  
5 at the standards or even at a higher level. And, you  
6 know, it's kind of like a no-brainer. If you can do the  
7 job at a lower cost, why do it at a higher one?

8 Thank you for your time and your  
9 consideration.

10 MS. ORTH: Thank you, Ms. Slota.

11 Mr. Schlenker-Goodrich.

12 ERIK SCHLENKER-GOODRICH

13 having been first duly sworn or affirmed, was  
14 examined and testified as follows:

15 DIRECT TESTIMONY

16 MR. SCHLENKER-GOODRICH: As an initial matter,  
17 I want to note for the record that I'm -- yesterday we  
18 submitted an additional letter to the Board that  
19 complements our Friday, May 27th letter, and I have  
20 copies of that which I'll provide to the Board.  
21 Basically there was an error in our citation, so we  
22 corrected that with yesterday's filing.

23 But today in terms of public comment, I want  
24 to make four basic points that summarizes our  
25 perspective at the Western Environmental Law Center, as



1 well as the perspective of several environmental groups.  
2 And I'll just list them very quickly. That would be  
3 Dine Care, the Navajo, the Natural Resources Defense  
4 Council, New Energy Economy, New Mexico Sportsmen, the  
5 Rio Grande Chapter of the Sierra Club, the Sierra Club,  
6 San Juans Citizens Alliance and WildEarth Guardians.

7 And the first point I want to make is that  
8 with visibility protections under the Clean Air Act  
9 we're really talking about, in my view, two things.

10 Number one, protection of the iconic  
11 landscapes, both in New Mexico and the broader Four  
12 Corners region, my home area up in Northern New Mexico  
13 and Taos. That means places like Wheeler Peak  
14 Wilderness or the Cruces Basin Wilderness or the Latir  
15 Peak Wilderness. And these iconic landscapes are very  
16 essential to both our culture and also our economy.

17 The second component of visibility protection  
18 is really the public health benefits. Now, these are  
19 indirect, because the purpose of visibility protections  
20 is really protection of visibility. But there are very  
21 significant indirect public health benefits from  
22 increased, intensified regional haze protections.

23 And these can be quantified. And when you're  
24 talking about visibility protections, what we're really  
25 talking about is trying to internalize the costs of

1 pollution, and here specifically of nitrogen oxides.  
2 Someone at some point is going to bear the costs,  
3 whether that's a ratepayer in terms of increased  
4 electricity costs or a child getting asthma. At some  
5 point, someone has to pay.

6 Sometimes those costs aren't internalized.  
7 Sometimes they're not even recognized. And so that's  
8 what we're talking about here, is trying to internalize  
9 the costs of haze causing pollution emitted from the San  
10 Juan Generating Station.

11 And we can quantify those impacts. We can  
12 also do qualitative analysis of those impacts.

13 From a quantitative perspective, EPA has  
14 estimated that the benefits of regional haze protections  
15 would amount to around \$8.4 to \$9.8 billion a year,  
16 that's annual benefits, while the costs of regional haze  
17 protections are far less, at around 1.4 to \$1.5 billion.  
18 Those are the capital costs of implementing, investing  
19 in these pollution control technologies.

20 And, now, we also can't put aside the ethics  
21 and morals. That -- those benefits also reflect the  
22 fact that we're preventing 1,600 premature deaths each  
23 year, and also preventing 1 million lost work and school  
24 days. Those are things that have concrete economic  
25 benefits, but also very personal, moral, ethical impacts

1 to families here in New Mexico and the broader region.

2 Now, the real debate here in terms of  
3 technological issues is between the Department's  
4 proposal for SNCR technology, selective noncatalytic  
5 reduction technology, versus selective catalytic  
6 reduction technology, as proposed by the EPA in its  
7 proposed Federal Implementation Plan.

8 Now, we believe very strongly that the SCR  
9 technology is mandated and acquired under the Clean Air  
10 Act and that ultimately EPA is going to make a  
11 determination of whatever this Board decides whether the  
12 State Implementation Plan is sufficient, or if this  
13 Board decides not to approve the State Implementation  
14 Plan, EPA will then put forth its own Federal  
15 Implementation Plan.

16 Now, in terms of the concrete benefits of SCR  
17 technology versus SNCR, EPA's determined that SCR is  
18 more protective. It prevents about 77 to 90 percent of  
19 nitrogen oxide emissions from San Juan Generating  
20 Station, while SNCR only reduces around 23 to 25 percent  
21 of the nitrogen oxides. This is pretty significant.  
22 It's a difference of 17,500 tons of nitrogen oxides per  
23 year under SCR versus 4,900 pounds of NO<sub>x</sub> per year under  
24 SNCR.

25 From a cost perspective, SCR technology is

1 also far more cost effective ton for ton. When you use  
2 SCR technology, you're talking about less than \$2,000  
3 per ton of reduced nitrogen oxides. SNCR is far less  
4 efficient and actually costs around \$3,700 per ton of  
5 reducing nitrogen oxide of pollution.

6 So from our perspective, the SCR technology is  
7 far more protective and also far more cost effective  
8 than SNCR technology. So it reflects good science, it  
9 reflects good policy, and fundamentally it represents  
10 the public interest.

11 Now, going into my final point here, the  
12 Environment Department's proposal isn't good science,  
13 and it isn't good policy, and it isn't in the public  
14 interest, and there are three primary -- or four primary  
15 problems with the SNCR proposal.

16 The first of those problems is that it fixates  
17 on ratepayer impacts. Now, ratepayer impacts are  
18 certainly important and a worthy consideration for  
19 determining what kind of pollution control reduction  
20 technology you want to consider. But you can't put  
21 aside all of those indirect benefits to public health  
22 that can be quantified and at least qualitatively  
23 analyzed.

24 But under cross-examination, the Department  
25 has admitted, as well as PNM has admitted that they

1 didn't actually consider the cost of public health or,  
2 frankly, the environment. Instead they made a decision  
3 that was fixated again exclusively on ratepayer impacts.

4 And to emphasize, I'm not dismissing those  
5 impacts. I'm simply saying those are one factor and  
6 there are other factors in terms of costs and benefits  
7 of one technology versus another technology.

8 So fundamentally we think that the SNCR  
9 proposal as put forth by the Department and supported by  
10 PNM Resources and others elevates the concerns of  
11 ratepayer impacts over visibility protections, cost  
12 effectiveness and public health. And we think one of  
13 the reasons that they've done this is that there's far  
14 too cozy a relationship between PNM Resources and the  
15 Environment Department.

16 In our comments that we submitted on May 27th,  
17 we noted that EPA and PNM Resources had met the pressure  
18 of EPA to adopt a more reduced SNCR proposal or to at  
19 least consider the state's proposal.

20 And in fact, they're apparently having  
21 conversations with the Attorney General's Office, where  
22 the Attorney General's Office has agreed to litigate  
23 what they view as, quote, unquote, a flawed EPA  
24 proposal, which suggests to us that they've made a  
25 premature decision to challenge whatever it is that EPA

1 decides to do.

2 And finally, we think that even if that was  
3 not the case, that there was some sort of political  
4 influence at play here -- we think that the State  
5 Implementation Plan as proposed by the Environment  
6 Department is on very shaky ground on a technical level  
7 and conflicts with various findings that EPA has already  
8 made in its proposed Federal Implementation Plan.

9 So I think in significant part we risk wasting  
10 New Mexico resources to put forth a plan that ultimately  
11 will be rejected by the Environmental Protection Agency.  
12 And EPA here, as much as there has been comments that  
13 they are trying to impose a federal mandate here on New  
14 Mexico, are only doing so as a measure of last resort,  
15 because the State of New Mexico, frankly, has failed in  
16 its obligations to submit an acceptable State  
17 Implementation Plan.

18 So the problem here isn't EPA. EPA is simply  
19 doing its job and, quite frankly, is simply trying to  
20 represent the broader public interests in terms of  
21 visibility protections.

22 EPA is not alone in recommending SCR  
23 technology. The State of Colorado has submitted  
24 comments supporting SCR technology. The National Park  
25 Service has, the Fish & Wildlife Service has, as well as

1 an expert that we contracted to provide comments to EPA,  
2 Dr. Sahu, which we provided in our May 27th comments.

3 So we would recommend that this Board reject  
4 the Department's proposal and join in those other  
5 federal entities in supporting either SCR technology  
6 or -- I think what the easiest thing to do here would be  
7 to support EPA's Federal Implementation Plan.

8 Thank you.

9 MS. ORTH: Thank you, Mr. Schlenker-Goodrich.

10 EXAMINATION

11 BY THE BOARD:

12 MS. RYAN: I have a question.

13 Yeah. I'm -- our role here is to evaluate the  
14 scientific evidence put in front of us, whether that  
15 makes the improvements to the environment that we're  
16 supposed to, and also balance that against other  
17 interests of the public, including the health, welfare  
18 of this -- the citizens of New Mexico.

19 And you've stated several times that several  
20 other factors can be quantified.

21 And I'm just wondering, playing devil's  
22 advocate here, why haven't they been quantified? Why  
23 does all of the number of environmental groups that you  
24 represent, which is quite a number of them, gotten  
25 together and -- and put forth some scientific evidence

1 for us to consider?

2 Because right now, there is none in front of  
3 us. We have an opinion from -- an opinion from you, a  
4 public comment, and that's all that we have. And I  
5 don't have -- I don't have witnesses, I don't have data,  
6 exhibits to consider on anything that you're saying.  
7 And -- and as much as I want to be able to consider  
8 that, that is not in front of me.

9 All that I have from you is a public comment.

10 So I -- that will be going into my personal  
11 decision-making, is that I don't -- we're here to -- I  
12 want to look at -- sensically look at all the evidence  
13 in front of me, and I don't have technical testimony or  
14 anything like that from your organizations.

15 So, I guess, why?

16 MR. SCHLENKER-GOODRICH: I actually would  
17 respectfully disagree with you, Madam Board Member. I  
18 think in terms of technical evidence, you don't have to  
19 go very far. I think you can look at EPA's Federal  
20 Register notice dated January 5th, 2011, which goes into  
21 detail in support of the selective catalytic reduction  
22 technology.

23 I'd also point to you in the direction of the  
24 testimony of Dr. Sahu, and that's contained in Exhibit  
25 A, which we attached to our May 27th comments. And it's



1 a little confusing here, but it's Exhibit -- it's  
2 Exhibit 3, which is attached -- is part of Exhibit A.

3 And that's a technical analysis done by  
4 somebody who has, frankly, far more technical expertise  
5 than I do, and I wouldn't wager to wade into that  
6 technical debate. But Dr. Sahu provides a very  
7 convincing case of why SCR technology is valuable in  
8 this instance. In fact, he critiques EPA's proposal and  
9 says that EPA's proposal is far too lenient.

10 So in terms of technical evidence, I don't  
11 think you have to go any farther than the EPA Federal  
12 Register notice, as well as Dr. Sahu's testimony.

13 MR. ALVIDREZ: Madam Hearing Examiner, I was  
14 going to make a clarifying statement or -- in terms of a  
15 discussion I had with Mr. Schlenker-Goodrich about the  
16 status of the filings that have been made on behalf of  
17 his clients.

18 And my understanding is they are purely public  
19 comment, that they are not testimony upon which this  
20 Board can rely from a technical and evidentiary  
21 standpoint in order to make a determination. If they  
22 are, in fact, being offered as evidence, which is --  
23 technical evidence and expert evidence, then I'm going  
24 to have to object and also request that they be stricken  
25 on several grounds.

1           Of course, the materials were submitted  
2 untimely pursuant to both the prehearing order in this  
3 case, as well as in accordance with the Board's own  
4 regulations and rules with respect to rulemaking, which  
5 says if you don't submit your testimony by the deadline,  
6 it will not be admitted.

7           Of course, we have not had an opportunity to  
8 cross-examine or -- anyone from EPA or Dr. Sahu or  
9 anyone else, so it's difficult to respond to what's been  
10 filed.

11           So I think it's entirely improper for -- at  
12 this juncture to try and bootstrap this commentary into  
13 some type of testimony this Board can rely on on a legal  
14 basis to make a ruling.

15           So I request that either those comments be  
16 stricken from the record or, alternatively, that it be  
17 clear on the record that they are nothing more than  
18 public comment and opinion and not -- not evidence in  
19 this case.

20           MS. ORTH: All right.

21           Just to respond before I invite the other  
22 counsel, it's true that the rules and the procedural  
23 order state that technical testimony not coming in by  
24 the deadline set there will not be admitted, but public  
25 comment did not have that same deadline.

1 Mr. Schlenker-Goodrich and everyone else who made public  
2 comment today and will make it tomorrow is entitled to  
3 offer that comment, which will be admitted.

4 So yes, I agree with you, it can't be  
5 technical testimony, and yet I think you went a little  
6 too far when you said it can't be evidence that the  
7 Board can rely on, because -- correct me if I'm wrong,  
8 Mr. Vigil -- I believe this Board relies on technical  
9 testimony and public comment and the other evidence in  
10 front of it. It's still evidence, but you're right that  
11 it's not technical evidence in reaching its decision.

12 MR. VIGIL: Well, Madam Hearing Officer, I  
13 agree that the Board does rely on both public comment  
14 and technical testimony.

15 I think the distinction, though, is that what  
16 Mr. Alvidrez is referring to is that the attachment of  
17 Dr. Sahu, which may have been technical in nature and  
18 was filed improperly, and I think that's what -- if I'm  
19 understanding correctly, the objection, that is what  
20 he's asking to be stricken -- you know, Mr. Goodrich is  
21 allowed to make public comment here, as you correctly  
22 note, but I think the real -- I guess the heart of  
23 the -- the dispute here is the technical nature of  
24 something that came in ostensibly under public comment.

25 MS. ORTH: All right. And I was getting to

1     that.

2                 MR. VIGIL:   Okay.

3                 MS. ORTH:   Sorry.   I was making my more basic  
4     point first.

5                 So now on the question of whether  
6     Dr. Sahu's -- excuse me -- report should be included,  
7     I'll ask all of the lawyers for their opinion.

8                 First, you, Mr. Schlenker-Goodrich.

9                 MR. SCHLENKER-GOODRICH:   Well, let me state  
10    first in terms of the objection to the public comment  
11    letter, you know, provisions are provided for exhibits.  
12    On terms of Dr. Sahu's exhibit specifically, this was  
13    provided to EPA.

14                And I would agree with counsel for PNM  
15    Resources to the extent that with public comment,  
16    because it is not subject to the same level of  
17    cross-examination, you do have some discretion to give  
18    it lesser weight than other technical evidence.  That is  
19    certainly within your purview.

20                I think with Dr. Sahu's testimony, which has  
21    already been submitted to EPA, the Board may be on some  
22    shaky ground to ignore evidence that EPA has that it may  
23    rely on in rejecting the State Implementation Plan.

24                So I would suggest that you consider it and,  
25    obviously, give it the weight that you think it

1 deserves. I have absolutely no problem with that given  
2 that we're providing public comment, which is of a less  
3 technical nature than providing technical testimony  
4 through a notice of intent. So I have no problem on  
5 that.

6 But I do think it should be considered. I do  
7 think it's part of the record. I simply think you  
8 should give it the weight that you think it deserves.

9 MS. ORTH: Mr. Grantham, do you have anything  
10 to add?

11 MR. GRANTHAM: Yeah.

12 Madam Hearing Officer, the Department shares  
13 the concerns that counsel for PNM raised in particular  
14 with regard to Dr. Sahu's testimony. Technical  
15 testimony as defined under 20.1.1 means scientific,  
16 engineering, economic or other specialized testimony,  
17 but does not include legal argument, general comments or  
18 statements of policy or position.

19 So to the extent that counsel -- the  
20 conservation groups offer technical testimony, in a  
21 submission that was submitted well after the deadline  
22 for the notice of intent, I'm not sure how the Board can  
23 give that more or less weight. It's either in or it's  
24 out.

25 And our position would be that the -- of

1 course, the public comments should be accepted into the  
2 record and given the weight that the Board deems  
3 appropriate, but that should not include the comments of  
4 Dr. Sahu. And whether or not EPA views that as relevant  
5 in assessing our BART determination isn't really a  
6 factor, because we have to look to the procedural  
7 guidelines for this -- to the governing laws for this  
8 proceeding, not EPA's.

9 MS. ORTH: All right. Thank you,  
10 Mr. Grantham.

11 Mr. Rose?

12 Oh.

13 MR. ROSE: I'm hiding.

14 Madam Hearing Officer, we would join in the  
15 comments from NMED's counsel and from PNM's counsel, but  
16 I would note that the reason why the Board has a  
17 dichotomy between public and technical testimony is,  
18 one, to alert those who are going to participate in the  
19 hearings ahead of time that there will be technical  
20 testimony that they could provide responsive testimony  
21 to and that the purpose for providing those in a notice  
22 of intent and providing live testimony is to allow for  
23 cross-examination of that testimony.

24 And with Dr. Sahu's testimony, we're not  
25 provide -- being given the ability to cross-examine and

1 question any of the assertions that he raises in his  
2 testimony.

3 And for that reason, I think that the Board's  
4 rules don't allow for that kind of testimony to be  
5 treated as public, because I don't believe the Board can  
6 really differentiate between give -- just on the weight  
7 to give it as to -- as to how much importance it's  
8 given.

9 I think the Board's already made that decision  
10 when it decided its rules, and that testimony should  
11 have been provided in person and subject to  
12 cross-examination. And although Dr. Sahu did testify in  
13 front of this Board sometime last summer, if you will  
14 recall, on the greenhouse gas rules, so it's not as  
15 though the Board isn't familiar with him.

16 But I think that's the proper way to do this  
17 and prevent -- or present his opinions and allow them to  
18 be cross-examined and, therefore, the Board be given the  
19 benefit of that.

20 MS. ORTH: All right.

21 Mr. Roybal, do you have anything to add?

22 MR. ROYBAL: No, Madam Hearing Officer. I  
23 would support the comments made by Mr. Rose and  
24 Mr. Alvidrez and Department counsel.

25 MS. ORTH: All right. Thank you.

1 MR. SCHLENKER-GOODRICH: Madam Hearing  
2 Officer, if I could make one -- I think there's one  
3 important distinction here that has not been considered,  
4 and that is Dr. Sahu did not provide testimony  
5 specifically regarding the State Implementation Plan,  
6 rather these were comments submitted to the  
7 Environmental Protection Agency.

8 So I don't think it's necessarily the type of  
9 technical testimony that this Board prohibits via public  
10 comment, rather this was something submitted already to  
11 EPA, that is in front of EPA, and merits consideration  
12 by this Board because it is going to be a factor at some  
13 level, who knows what weight they will give it, but will  
14 be a factor in EPA's consideration of both its Federal  
15 Implementation Plan and the state's approval.

16 But it's not specific to the state  
17 implementation process. So I'm not sure it falls under  
18 the definition of technical testimony that will be  
19 prohibited via public comment.

20 MS. ORTH: Our general standard for what  
21 constitutes technical testimony is testimony that to be  
22 competent would require something more than a high  
23 school degree. And I -- my impression is that  
24 Dr. Sahu's testimony would meet that criteria.

25 So, Board, if this were a hearing in which I



1 were making a recommendation, for example, to my cabinet  
2 secretary, I would recommend that the cabinet secretary  
3 not rely on that testimony for the reasons that have  
4 been given, it's surprising, it's contrary to your rules  
5 and the procedural order that I entered back in March,  
6 and Dr. Sahu is not here in this hearing to be  
7 cross-examined.

8 For all of those reasons, my recommendation  
9 would be for you not to rely on it.

10 Mr. Vigil may have more advice for you.

11 MR. VIGIL: Madam Hearing Officer, I believe  
12 your recommendation is sound.

13 I would also point out that the hearing rules,  
14 especially Section 304, which governs participation by  
15 the general public, says that public comment is  
16 nontechnical testimony, and from what we've learned  
17 here, it looks that Dr. Sahu, who does have a PhD and,  
18 as Mr. Rose noted, did provide some very high level,  
19 technical testimony last year in some of the hearings,  
20 would definitely qualify as technical testimony.

21 MS. ORTH: Okay.

22 So, Board, what I don't want to lose here,  
23 then -- Mr. Schlenker-Goodrich, then the ruling will be  
24 that the testimony is excluded.

25 I don't want to lose here, though, as part of

1 that ruling all of what Mr. Schlenker-Goodrich has said  
2 or everything that was submitted on behalf of the  
3 conservation groups. You've heard his other points, and  
4 that, as far as I'm concerned, remains part of what you  
5 can base your decision on.

6 All right. Is there anything else,  
7 Mr. Schlenker-Goodrich?

8 MR. SCHLENKER-GOODRICH: No. I'm done.

9 MS. ORTH: All right. I think --

10 MR. FULFER: I have one question.

11 MS. ORTH: I'm sorry.

12 Mr. Fulfer.

13 MR. FULFER: I have one question.

14 In talking about public health benefits,  
15 electricity drives the economy, it drives our modern  
16 life. It's the thing that's lifted us out of the  
17 woodburning cooking era days and woodburning heating  
18 days and kind of brought us into a pollution-free  
19 environment, unlike our neighbor to the south, in  
20 Mexico.

21 So looking at the state, and being a poor  
22 state at that, and the economy being in bad shape, in  
23 your opinion, is it in our benefit and balance to all to  
24 have a plant that provides a positive economic impact  
25 and improving environmental impacts?

1 MR. SCHLENKER-GOODRICH: Well, I think, as I  
2 mentioned, that at some point the costs are borne by  
3 people, whether that's in terms of an increase in the  
4 ratepayer, how much a ratepayer pays to PNM Resources or  
5 whether a child ends up having asthma and then has  
6 increased health costs.

7 I certainly have no problem with electricity.  
8 I love electricity. I power computers, iPods, my home  
9 with it.

10 I think what all my client groups would  
11 suggest is that the best way forward in terms of energy  
12 is towards a transition to energy efficiency and to  
13 clean energy technology, and that is far better both  
14 from an electricity-producing perspective, from an  
15 economic perspective and from a public health  
16 perspective.

17 MR. FULFER: Okay.

18 MS. ORTH: Other Board questions?

19 No?

20 All right. Thank you very much.

21 MR. SCHLENKER-GOODRICH: Thank you, Madam  
22 Chair, Board members, Madam Hearing Officer.

23 MS. ORTH: All right. If there's nothing  
24 else, we will recess and reconvene tomorrow morning in  
25 Farmington at 9:00 a.m. at the college.

1 Anything else at all?

2 MS. PEACOCK: I'd like to thank everybody who  
3 provided testimony today and public comment. We really  
4 appreciate it. And this is very interesting for us.

5 MS. ORTH: Thank you very much.

6 MS. PEACOCK: And we appreciate the written  
7 materials, very well prepared.

8 (Proceedings adjourned at 1:47 p.m.)

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1 STATE OF NEW MEXICO )  
2 ) ss.  
3 COUNTY OF BERNALILLO )  
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6 I, CHERYL ARREGUIN, the officer before whom the  
7 foregoing proceeding was taken, do hereby certify that  
8 the witnesses whose testimony appears in the foregoing  
9 transcript were duly sworn or affirmed; that I  
10 personally recorded the testimony by machine shorthand;  
11 that said transcript is a true record of the testimony  
12 given by said witnesses; that I am neither attorney nor  
13 counsel for, nor related to or employed by any of the  
14 parties to the action in which this proceeding is taken,  
15 and that I am not a relative or employee of any attorney  
16 or counsel employed by the parties hereto or financially  
17 interested in the action.

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